# TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 122

SAMUEL A. MYERS AND HARRY MYERS, COPARTNERS AS S. A. & H. MYERS, PETITIONERS,

vs.

INTERNATIONAL TRUST COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE COUNTY OF SUFFOLK, STATE OF MASSACHUSETTS

PETITION FOR CERTIORARI FILED [redacted]

CERTIORARI GRANTED JUNE 1, 1926

(31,221)

(31.221)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1925.

# No. 498

SAMUEL A. MYERS AND HARRY MYERS, COPARTNERS AS S. A. & H. MYERS, PETITIONERS,

*vs.*

INTERNATIONAL TRUST COMPANY

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK, STATE OF MASSACHUSETTS

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1925

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

SUFFOLK, ss. IN EQUITY.

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INTERNATIONAL TRUST COMPANY

*vs.*

SAMUEL A. MYERS, HARRY MYERS AND S. A. AND H. MYERS, PARTNERSHIP.

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## PETITION

Respectfully represents the International Trust Company, petitioner, which says it is a corporation organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in Boston, in the County of Suffolk.

That S. A. Myers and Harry Myers, respondents, are residents of the Town of Brookline in the County of Norfolk; that S. A. and H. Myers is a partnership consisting of the said Samuel A. Myers and said Harry Myers as partners carrying on a business in the City of Boston in the County of Suffolk, said business consisting of the manufacture and sale of young men's and boys' clothing.

That on or about the 2nd day of October, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "A," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 2nd day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "B," payable to the order of itself; that

before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 10th day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "C," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 13th day of November, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "D," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 1st day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "E," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 8th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "F," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers

and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 11th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "G," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 13th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "H," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 15th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "I," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 18th day of December, 1916, the said partnership of S. A. and H. Myers made a note for $2000, a copy of said note with endorsements thereon being annexed and marked "J," payable to the order of itself; that before delivery of said note the said partnership of S. A. and H. Myers endorsed the same and the said Samuel A. Myers and the said Harry Myers also endorsed said note; that thereupon said note was discounted with the

said International Trust Company; that at maturity of said note the same was not paid.

That on or about the 28th day of January, 1917, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts against the said partnership of S. A. and H. Myers; that thereafter an offer in composition of 40c on the dollar was made by the said partnership which offer was duly confirmed by said court; that the claim of the petitioner was allowed in the sum of $19,883.55; that on account of said composition the sum of 20 per cent, namely $3,976.71 in cash has been received by the said International Trust Company and 20 per cent in notes which have not yet matured.

That the respondent Samuel A. Myers and Harry Myers are the sole owners of the partnership property and the sole persons interested therein and have no other assets than their interest in the partnership property which may be attached at law.

That in the management of said partnership the duties of the partners are divided, namely, that the said Harry Myers is the salesman for said partnership and confines his work exclusively to the sale of its merchandise and has nothing to do with the financing of the business or manufacturing of said goods; that he spends a large part of his time in traveling and selling clothing; that the said S. A. Myers is in charge of the office, buys the materials, directs the finances and supervises the manufacturing of the merchandise of said business.

That your petitioner is informed and believes and therefore alleges that the said S. A. Myers and the said Harry Myers are not proper persons to remain in control of said business pending these proceedings but need supervision and control to prevent the waste of the assets of said partnership; that previous to the aforesaid bankruptcy petition the said S. A. Myers and the said Harry Myers neglected said business and permitted it to get into a precarious condition; that the said Harry Myers is in ill health and unable to properly attend to his duties; that the said S. A. Myers through the intemperate use of liquor made himself incapable and unfitted to attend to the proper performance of his duties.

WHEREFORE your petitioner respectfully prays that:

1. It may be allowed to establish its debt against the said Harry Myers.

2. Upon the establishment of the petitioner's debt the assets of said partnership may be used to satisfy the same.

3. The respondent S. A. Myers be restrained and enjoined from transferring, pledging, hypothecating or otherwise disposing of his interest in said partnership.

4. The said Harry Myers be restrained and enjoined from transferring, pledging, hypothecating or otherwise disposing of his interest in said partnership.

5. The respondents the said S. A. Myers and the said Harry Myers as individuals and as partners be restrained from wasting or disposing of the assets of said firm.

6. A receiver be appointed to take over and operate the business of said partnership and to conduct the same and to conserve the assets until further order of this court.

7. Your petitioner may have such further relief as this honorable court may deem proper.

By its Attorney,

JOHN R. LAZENBY.

Then personally appeared John R. Lazenby of the above named petitioner and made oath that the statements above subscribed to by him are true to the best of his knowledge and belief.

WM. P. EVARTS,
Notary Public.

Filed Sept. 26, 1917.

**A.**

$2000.00 Boston, Oct 2, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

14820

P. N. P.
Feb. 2, 1917
N. P.
Fees 2.06

No. Due Feb. 2/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**B.**

$2000.00 Boston, Nov. 2, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

5204

P. N. P.
Mar. 2, 1917
C. B. P.
Fees 2.04

No. Due Mar. 2 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers

**C.**

$2000.00 Boston, Nov. 10, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received..

6642

P. P. P.
Mar. 12, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Mar. 10 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**D.**

7133

$2000.00 Boston, Nov. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
Mar. 13, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Mar. 13 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**E.**

9927

$2000.00 Boston, Dec. 1, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
April 2, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 1/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**F.**

10843

$2000.00 Boston, Dec. 8, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

P. N. P.
April 9, 1917
C. B. P.
N. P.
Fees 1.56

No. Due Apr. 8/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**G.**

$2000.00 Boston, Dec. 11, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11144

P. N. P.
Apr. 11, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 11/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**H.**

$2000.00 Boston, Dec. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11510

P. N. P.
April 13, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 13/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

**I.**

$2000.00 Boston, Dec. 15, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

11714

P. N. P.
April 16, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 15 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

J.

$2000.00 Boston, Dec. 13, 1916.

Four months after date we promise to pay.....
to the order of ourselves.....
Two thousand 00/100 dollars.....
Payable at International Trust Co.....
Value received

12012

P. N. P.
April 18, 1917
C. B. P.
N. P.
Fees 2.06

No. Due Apr. 18/17 S. A. & H. Myers

Endorsed on back: S. A. & H. Myers
S. A. Myers
Harry Myers

## DEFENDANTS' ANSWER.

The defendants admit that the International Trust Company is a corporation duly organized under the laws of the Commonwealth of Massachusetts.

The defendants admit that S. A. Myers and Harry Myers, respondents, are copartners under the firm name and style of S. A. & H. Myers, carrying on business in Boston in the County of Suffolk.

The defendants admit that the several notes set out in the plaintiff's bill of complaint were signed by the said partnership and endorsed by the said Samuel A. Myers and said Harry Myers.

The defendants admit that the said Harry Myers is the salesman of said partnership and that said Samuel A. Myers is in charge of the office.

The defendants deny that the said Samuel A. Myers and said Harry Myers neglected said business, and deny that said Harry Myers is in ill health and that said Samuel A. Myers is incapable and unfitted to attend to the proper performance of his duties.

The defendants deny that on or about the twenty-eighth day of January 1917 an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts against said partnership of S. A. & H. Myers, and say that on or about said twenty-eighth day of January 1917 an involuntary petition in bankruptcy was filed against Samuel A. Myers and Harry Myers, indi-

vidually, said bankruptcy case being numbered 24,571 of the United States District Court for the District of Massachusetts; that said International Trust Company proved its claim in bankruptcy against the alleged bankrupts Samuel A. Myers and Harry Myers, and that subsequently an offer was made in composition by said Samuel A. Myers and Harry Myers, a copy of which offer in composition is hereto annexed marked "A"; that said International Trust Company participated in said proceedings and proved its claim; that thereafter said composition offer was confirmed by said Court, a copy of which confirmation is hereto annexed marked "B," and that the dividend under said offer of composition was paid to and received by said plaintiff as provided for in said offer of composition.

Wherefore the defendants say that the plaintiff's claim as alleged in said Bill has been discharged by said confirmation in bankruptcy.

And your defendants deny each and every other allegation in the plaintiff's bill of complaint, except those herein expressly and specifically admitted.

By their Attorneys,
JULIUS NELSON
SAMUEL O. REINSTEIN

Filed Nov. 30, 1917.

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## ORDER FOR APPOINTMENT OF COMMISSIONER TO TAKE EVIDENCE.

In the above entitled case, at the hearing of the same before Mr. Justice Morton, it is ordered, under the provisions of Chancery Rule, No. XXXV., at the request of Plaintiff that Madella H. Small be, and she hereby is, appointed Commissioner to take the evidence in said case, to be reported to the Supreme Judicial Court.

By the Court,
GUY H. HOLLIDAY,
Asst. Clerk.

Filed Nov. 19, 1924, as of Oct. 27, 1924.

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## RULINGS AND FINDINGS.

The facts in the case were as follows:

On January 27, 1917, a creditors' petition was filed in bankruptcy against "Samuel A. Myers and Harry Myers,

co-partners, trading as S. A. and H. Myers." On February 10, 1917, "partnership schedules" were filed in which it was stated that the partners had no individual debts or assets

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["A" is printed as Exhibit 5 on page 18.]
["B" is printed as Exhibit 8 on page 21.]

and which included the plaintiff as a creditor on notes to the amount of twenty thousand dollars. On the same day a petition for a meeting of creditors was filed to act upon a proposal for composition; and on March 3 an offer of composition was made. This offer was confirmed upon May 28, 1917, and the plaintiff accepted composition on its notes. The bill was brought on September 26, 1917, in effect to hold the defendant Harry Myers liable as endorser on the said notes of twenty thousand dollars which he and S. A. Myers had endorsed individually. These notes, ten in number, were signed, "S. A. and H. Myers," payable to "ourselves" and endorsed, "S. A. and H. Myers, S. A. Myers, Harry Myers," except as to one note not endorsed by Harry Myers.

The defendant's claim is that the confirmation of the composition offer and the acceptance by the plaintiff of the dividend thereunder discharged the individual obligations of the defendants as endorsers. The question involved is a Federal question, to be determined by Federal law. In *Francis* v. *McNeal*, 228 U. S., 695, Mr. Justice Holmes, at page 701 states, "that it would be an incongruity to grant a discharge from the debt considered as joint but to leave the same persons liable for it considered as several," and holds in substance that if a partnership is in bankruptcy partners as individuals are also bankrupt. This decision in my opinion controls this case, unless as claimed the statement of the partners that they had no individual indebtedness estopped them from setting up such a claim. This statement does not in my opinion warrant the inference that the partners intended to have the bankruptcy proceedings only against the partnership and I accordingly rule that such a statement does not prevent them from taking advantage of the law as laid down in the case referred to.

MARCUS MORTON,
J. S. C.

1924, Nov. 12

## FINAL DECREE.

This case came on to be heard on the merits and, after the introduction of the evidence taken before the commissioner appointed by the court, was argued by counsel for the defendants and counsel for the plaintiff; and thereupon, upon consideration thereof, be it and it is hereby

ORDERED, ADJUDGED AND DECREED that the confirmation of May 28, 1917 of the defendants' offer in composition is a bar to this suit, and that the bill of complaint be and it is hereby dismissed without costs to the defendants.

By the Court,
HENRY E. BELLEW,
Assistant Clerk.

December 4, 1924.
(MORTON, J.)

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## APPEAL FROM FINAL DECREE.

And now comes the plaintiff International Trust Company in the above entitled case and appeals from the final decree entered therein.

By its Attorney,
JOHN R. LAZENBY.

Filed Dec. 15, 1924.

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## COMMISSIONER'S REPORT.

Monday, October 27, 1924.

The COURT: There doesn't seem to be much in dispute.

Mr. LAZENBY: Purely a question of law, nothing else.

The COURT: You stand on your question of law?

Mr. LAZENBY: Yes, and it is agreed that in 1916, and during the dates of this bankruptcy proceeding, there was a partnership of S. A. & H. Myers consisting of two partners, Samuel A. Myers and Harry Myers, and that they carried on a clothing business in Boston on Otis Street. Now first, I wish to offer the note of October 2, 1916.

(Note dated October 2, 1916, introduced and marked "Ex. 1.")

The COURT: The defendant admits executing several notes.

Mr. LAZENBY: It is just to put the form of the note in. It is a note of $2000. (Reads note.) Is there any need of putting the others in?

Mr. McCLENNEN: The only thing worth calling attention to is that they are all endorsed in form "S. A. Myers, Harry Myers," except the second note. You will notice that the second note differs from all the others in that Harry Myers didn't endorse it.

Mr. LAZENBY: Then I will just put the list in of the notes with the amounts.

The COURT: You don't need to do that. They are all admitted by the answer; the execution is admitted.

Mr. LAZENBY: The next exhibit is the creditors' petition of January 27, 1917.

(Creditor's petition dated January 27, 1917, introduced and marked "Ex. 2.")

Mr. LAZENBY: The next is the schedules filed by Samuel A. Myers and Harry Myers as S. A. & H. Myers, February 10, 1917.

(Schedules introduced and marked "Ex. 3.")

Mr. LAZENBY: This is an original signed by the two Myers. On the outside appears the docketing "Samuel A. Myers, Harry Myers, S. A. & H. Myers of Boston." I wish to call your Honor's attention to two things in this. (Reading.)

"To the Honorable James M. Morton, Junior, Judge of the District Court. Samuel A. Myers of Boston and Harry A. Myers of Brookline respectfully represent that they have been partners under the firm name of S. A. & H. Myers, having their principal place of business in Boston in the county of Suffolk, that the schedule hereto attached marked "A" and verified by their oaths contains a full statement of all of the debts of said partners, as far as possible the names and places of residence of their creditors, and such further statements concerning such debts as are required by the provisions of said acts. Said Samuel Myers further states that he has no individual debts and no individual assets except household furniture and wearing apparel to the value of $300 claimed to be exempt under the Revised Laws of Massachusetts, chapter 177, section 34." That statement is in writing and has been substituted for the following which has been stricken out:

"That the schedule hereto annexed marked "C," verified by his oath contains a full and true statement of all his individual debts, as far as possible the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts, and that the schedule hereto annexed marked "D," verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts."

Harry Myers did exactly the same thing. In Schedule A appears the International Trust Company as a creditor: "International Trust Co., 45 Milk Street, Boston, Massachusetts, borrowed money, notes, $20,000." There is no list of individual creditors of either of the partners attached.

I offer next a certified set of papers from the clerk's office of the district court. The first is a petition for the calling of the meeting of the creditors to act upon a proposal for composition. The second is an offer in composition; the third is a motion to confirm the offer of composition; the fourth is the notice issued by the clerk's office to creditors, calling a meeting of creditors; the fifth is the confirmation of the composition.

(Papers marked respectively "Ex. 4," "Ex. 5," "Ex. 6," "Ex. 7" and "Ex. 8.")

The COURT: These are all papers referring to the original petition? There is only one bankruptcy proceeding; they must all refer to one bankruptcy proceeding.

Mr. LAZENBY: Oh, yes. That is the plaintiff's case.

Mr. McCLENNEN: I will get you to agree to the following things, Mr. Lazenby. Mr. Lazenby agrees that the International Trust Company proved a claim on all these notes against the partnership for $20,000, less interest discount, because some of the notes were not due at the time the petition was filed and that claim was filed on March 3, 1917. It may not be necessary, but will make it more definitely clear; he has put in the order confirming the composition. There was an appeal from that order, and the mandate of the Circuit Court of Appeals confirming that order is dated August 30, 1917; the original order having

been entered May 28, 1917, and the confirmation which is set forth in the mandate is August 25, 1917. He concedes the following credits, 20% admitted by the bill of complaint, $3,976.71; credit balance on the books of the bank of $4.54; note which they subsequently collected of $110; a composition note of $1,988.34; second composition note of $1,988.34, making a total of $8,067.93, which would as a matter of computation leaving a balance from $20,000 of $11,932.07. The precise amount for which the claim was allowed, rebating interest, was $19,883.85.

In case your Honor should have seen this name "International Trust Co. vs. Myers," it may be of interest, although not bearing on the issue we have here, to know this situation. In these bankruptcy proceedings, the International Trust Company opposed composition on the ground of misstatements which they said had been made by the Myers. They failed in that position. They then sued on the notes on the ground that the discharge in composition had not discharged the Myers because of these statements. They prevailed in the superior court here; they prevailed in the supreme court of Massachusetts, and the case was then taken to the supreme court of the United States which held in 263 U. S., 64, that the discharge was a bar, and that having contested on the issue as they had in the bankruptcy court, they were estopped to contest on that issue in the subsequent suit. I would like to have it appear, possibly it has already, that there was no adjudication.

I hereby certify that the foregoing is a true record of the hearing reported by me in the case of International Trust Co. vs. Myers heard before Morton, J., in the Equity Merit Session, Superior Court, Suffolk County.

MADELLA H. SMALL,
Commissioner.

Filed Dec. 19, 1924.

Copy,
Attest:

Clerk.

## EXHIBIT 1.

$2000 00/100 BOSTON, OCT. 2, 1916

.....Four months after date we promise to pay to the order of.....Ourselves.....
.....Two thousand.....00/100...
Dollars Payable at International Trust Co.
Value received
No.....Due Feb. 2/17 S. A. & H. Myers

14820

(Endorsed) S. A. & H. Myers
A. A. Myers
Harry Myers

(Written across the face) P. N. P.
Feb. 2, 1917
C. B. P.
N. P.
Fees 2.06

---

Chester B. Pierce, Notary Public

Superior Court
Ex. 1
M. H. Small
Stenographer

COMMONWEALTH OF MASSACHUSETTS.
COUNTY OF SUFFOLK, }
CITY OF BOSTON. }

On the 2nd day of February in the year of our Lord, one thousand nine hundred Seventeen I, CHESTER B. PIERCE, NOTARY PUBLIC, duly appointed and qualified for the Commonwealth of Massachusetts, practicing in the City of Boston, at the request of the Treasurer of the INTERNATIONAL TRUST CO., of Boston, went with the original Note, which is hereto annexed, the time therein limited, having full elapsed, and demanded payment thereof of the INTERNATIONAL TRUST CO., Boston, Mass., and payment was refused, the answer being no order to pay.

The Note remaining unpaid, I duly and officially notified the endorser of said dishonor by written notice addressed to them, and mailed the same, postage prepaid, under cover to them in said notice requiring payment.

WHEREFORE, I, the said Notary, by request as aforesaid, have protested and by these presents do solemnly protest against the maker of said Note, the endorser thereof, and all others concerned therein, for Exchange, Re-Exchange and all Costs, Charges, Damages, (Seal) and Interest, Suffered and Sustained, or to be Suffered and Sustained, by reason or in consequence of the non-payment thereof.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Notarial Seal, the day and year first above written.

| | | |
|---|---|---|
| FEES | ( Revenue Tax, | |
| | ( Protesting for Non-Payment, | 2. |
| | ( Postage, Travel and Expense, | .06 |
| | | 2.06 |

Chester B. Pierce (Notary
45 Milk Street, (Public
Boston.

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## STIPULATION AS TO PRINTING.

It is hereby agreed that Creditors' Petition, Exhibit No. 2, and Debtors' Schedules, Exhibit No. 3, need not be printed in the record but may be produced at the time of argument.

JOHN R. LAZENBY,
Attorney for Plaintiff.

DUNBAR, NUTTER & McCLENNEN,
Attorneys for Defendants.

Filed Dec. 19, 1924.

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Superior Court
Ex. 4
M. H. Small
Stenographer

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of

Samuel A. Myers and Harry Myers } In Bankruptcy
Alleged Bankrupts. } Number 24,571

To the Honorable James M. Morton, Jr.,

Judge of the District Court of the United States for the District of Massachusetts.

The above-named bankrupts respectfully represent that a composition of forty per cent, upon all unsecured debts not entitled to a priority Twenty per cent in cash and two notes for ten per cent each, payable in three and four months from date, in satisfaction of their debts is to be proposed before adjudication by them to their creditors, as provided by the Acts of Congress relating to Bankruptcy, and they verily believe that the said composition will be accepted by a majority in number and in value of their creditors whose claims are allowed.

Wherefore, they pray that a meeting of their creditors may be duly called to act upon said proposal for a composition, according to the provisions of said Acts and the rules of Court.

Samuel A. Myers
Harry Myers

Subscribed and sworn to before me this twelfth day of February A. D. 1917.

Samuel O. Reinstein,
Justice of the Peace.

ENDORSED.
Number 24,571
In Bankruptcy
Law of 1898
Petition for Meeting to Consider Composition
In the matter of
Samuel A. Myers and Harry Myers
Alleged Bankrupts.
Filed in Court this 10th
day of February A. D. 1917.
11.30 A. M.

## EXHIBIT 5.

(Offer of Composition.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of
Samuel A. & Harry Myers
Alleged Bankrupts
} In Bankruptcy
Number 24,571

TO THE HONORABLE JAMES M. MORTON, Jr., Judge of said Court:

Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid: — that the said Samuel A. Myers & Harry Myers have been examined in open Court at a meeting of their creditors, that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors, to wit:—

To pay all claims entitled to priority in full, and to pay all unsecured creditors forty cents on the dollars of their just claims, 20% in cash and two notes for 10% each, payable in three and four months, respectively. The consideration to be thus paid, and the money necessary to pay all debts which have priority, and the costs of the proceedings, to be deposited in the National Merchant's Bank of Boston, in accordance with the law in such cases.

Samuel A. Myers
Harry Myers

ENDORSED.

Number 24,571
In Bankruptcy Law of 1898
In the matter of
Offer of Composition.
Samuel A. & Harry Myers
Alleged Bankrupts.
Filed March 3, 1917

## EXHIBIT 6.

(Application for Confirmation of Composition.)

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MASSACHUSETTS

In the matter of
Samuel A. and Harry Myers
Alleged Bankrupts. } In Bankruptcy

TO THE HONORABLE JAMES M. MORTON, JR.,
JUDGE OF THE DISTRICT COURT OF THE
UNITED STATES FOR THE DISTRICT OF
MASSACHUSETTS

At Boston, in said District, on the twenty-third day of March, A. D. 1917, now come Samuel A. Myers & Harry Myers, the above-named alleged bankrupts and respectfully represent to the court that, after they had been examined in open court (or at a meeting of their creditors) and had filed in court a schedule of their property and a list of their creditors, as required by law, they offered terms of composition to their creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the alleged bankrupts to their creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of Twenty-one thousand six hundred twenty-six and 08/100 (21626.08/100) dollars, has been deposited, subject to the order of the judge, in the Merchants National Bank, of Boston, a designated depository of money in bankruptcy cases.

Wherefore the said Samuel A. Myers & Harry Myers respectfully ask that the said composition may be confirmed by the court.

Samuel A. Myers
Harry Myers
Alleged Bankrupts.

By their attorney
Samuel O. Reinstein.

ENDORSED.
Number 24,571
In Bankruptcy
Law of 1898
In the matter of
Samuel Myers
Harry Myers
Alleged Bankrupts

Application for Confirmation of Composition.

.....
Creditor

Address.....
Filed and allowed 190

Referee
United States District Court,
Filed in clerk's office.
Mass. Dist. Mar. 23, 1917, 11 A. M.
From the office of
Samuel O. Reinstein
18 Tremont St.
Boston

Attached to the foregoing is the following:

## EXHIBIT 7.

U. S. DISTRICT COURT.
Clerk's Office.

In the matter of
Samuel A. Myers
Harry Myers
Bankrupt, (No. 24571)

Boston, March 23, 1917

Order of notice on the confirmation of composition is made returnable April 2, 1917, on or before which day all persons interested may enter objections to the confirmation at the office of the Clerk of the U. S. District Court.

Yours respectfully,
WILLIAM NELSON, Clerk.

In referring to Bankruptcy cases please give the number.

ENDORSED.

Clerk's Office, U. S. District Court
District of Massachusetts.
111 Federal Building, Boston.

Samuel A. Myers and Harry Myers,

Official Business.
March 22, 1917.

Any person using this card, to avoid payment of postage on private matter of any kind will be subject to a fine of three hundred dollars. 24571.

Duplicate
April 2, 1917.

## EXHIBIT 8.

"The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge."—Chap 3, Sec. 14, Sub. Div. C of the Bankruptcy Act.

UNITED STATES OF AMERICA.

In the District Court of the United States.
For the District of Massachusetts.

| | |
|---|---|
| In the matter of | |
| Samuel A. Myers | In Bankruptcy |
| and | |
| Harry Myers | No. 24571 |
| Alleged bankrupts | |

An application for the confirmation of the composition offered by the bankrupt having been filed in Court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered in such place as was designated by the Judge of said Court, and subject to his order; and it also appearing that it is for the best interests of the

creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of congress relating to bankruptcy: it is therefore hereby ordered that the said composition be, and it hereby is confirmed.

Witness, the Honorable James M. Morton, Jr., Judge of said Court, and the seal thereof, this 28th day of May, A. D. 1917.

Mary E. Prendergast,
Deputy Clerk.

(Seal)

---

DISTRICT COURT OF THE UNITED STATES.
District of Massachusetts.

I, JOHN E. GILMAN, Jr., Deputy Clerk of the District Court of the United States for the District of Massachusetts, and during the temporary absence of the Clerk in charge of the Clerk's Office of said Court, and the custodian of its files and records, do hereby certify that the foregoing are true copies of the Petition for Meeting to Consider Composition, Offer of Composition, Application for Confirmation of Composition, and Order Confirming Composition, with all the endorsements thereon, on file in the Clerk's Office of said Court, in the cause in bankruptcy entitled,

IN THE MATTER OF
SAMUEL A. MYERS et al.,

Alleged Bankrupts,

and numbered 24571 on the Bankruptcy Docket of said Court.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of said Court, at Boston, in said District, this sixth day of October, A. D. 1924.

(Seal)

JOHN E. GILMAN, JR.,
Deputy Clerk.

(MEMORANDUM OF AMOUNT CLAIMED TO BE DUE.)

| | |
|---|---|
| Interest on notes — $20,000 at 6% from due dates to August 25, 1917 | $502.67 |
| (1) | |
| Interest on $15,908.75 from August 25, 1917 to December 25, 1917 | 318.18 |
| (2) | |
| Interest on $13,920.41 from December 25, 1917 to January 25, 1918 | 69.60 |
| (3) | |
| Interest on $11,932.07 from January 25, 1918, to October 9, 1924 | 4,802.66 |
| | 5,693.11 |
| | 11,932.07 |
| | $17,625.18 |

This seems approximately correct.

E. F. McCLENNEN
J. R. LAZENBY

(1) $20,000 less $4091.25
(2) $15,908.75 less $1,988.34
(3) $13,920.41 less $1,988.34

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR THE COMMONWEALTH
AT BOSTON

April 16, 1925.

IN THE CASE OF

INTERNATIONAL TRUST COMPANY

*v.*

SAMUEL A. MYERS ET ALI

pending in the Superior Court in the County of Suffolk

ORDERED that the clerk of said court in said county make the following entry under said case in the docket of said court, viz.,—

Decree for defendants reversed.
Decree entered for plaintiff.
The form of the decree is to be settled in the Superior Court.

BY THE COURT,

April 16, 1925. Walter F. Frederick, Clerk.

(Seal)

COPY,
ATT.

Francis A. Campbell, Clerk of the Superior Court.

Brief Statement of the Grounds and Reasons of the Decision.

See opinion on file. [Printed on pages 29-34 below.]

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT IN EQUITY
No. 14826.

INTERNATIONAL TRUST COMPANY

*v.*

SAMUEL A. MYERS ET AL

FINAL DECREE

This case came on to be heard on the application of plaintiff for the entry of a final decree after rescript from the Supreme Judicial Court reversing the decree entered herein on the fourth day of December 1924 and thereupon, upon consideration thereof, be it and it is hereby

ORDERED, ADJUDGED and DECREED that the confirmation on May 28, 1917 of the defendants' offer in composition is not a bar to this suit, and that the defendant Samuel A. Myers is liable to the plaintiff for the sum of Eighteen Thousand Fifty-one and Eighty-two One-hundredths Dollars ($18,051.82/100) and that the defendant Harry Myers is liable to the plaintiff for a part of the same sum, namely Sixteen Thousand Two Hundred Forty-six and Sixty-four One-hundredths Dollars ($16,246.64/100) and that judgment enter for the plaintiff in said respective sums against said defendants respectively and against said defendants jointly for costs in the sum of one hundred fifty-five and 60/100 dollars ($155.60), and that thereupon execution issue therefor.

By the Court,

May 5, 1925. HENRY E. BELLEW,
Assistant Clerk.

I oppose the entry of the foregoing decree but deem it to be in accord with the rescript of the Supreme Judicial Court.

Edward F. McClennen,
Attorney for Defendants.

SUFFOLK, ss. SUPERIOR COURT.

I hereby certify that the foregoing is a true copy of the Final Decree after Rescript in which International Trust Company is Plaintiff and Samuel A. Myers, Harry Myers and S. A. and H. Myers, Partnership, are Defendants, entered on the fifth day of May, A. D. 1925, by order of our said Court.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said Superior Court, at Boston, in said County of Suffolk, this thirteenth day of May, A. D. 1925.

Francis A. Campbell,
Clerk.

COMMONWEALTH OF MASSACHUSETTS

I, WALTER PERLEY HALL, Chief Justice of the Superior Court of the Commonwealth of Massachusetts,

DO CERTIFY, that FRANCIS A. CAMPBELL, Esq., whose signature is affixed to the papers hereunto annexed, is Clerk of said Superior Court, within and for the County of Suffolk, and hath the keeping of the files, records, and proceedings of said Court, within and for said County; Also, of the late Court of Common Pleas, within and for said County, and of the late Superior Court of the County of Suffolk, aforesaid; tha the is, by Law, the proper person to make out and to certify copies of the files, records, and proceedings of said several Courts; that full faith and credit are and ought to be given to his acts and attestations done as aforesaid; and that his attestation to the papers hereunto annexed, being numbered 1 to 25 inclusive, [*meaning in this print, pages 1 to 27 above*] of the files, records, and proceedings of the said Superior Court, is in due form.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of said Court to be hereunto affixed, this thirteenth day of May, in the year of our Lord one thousand nine hundred and twenty-five.

WALTER PERLEY HALL,

[Seal] Chief Justice of the Superior Court.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss. SUPERIOR COURT.

I, Francis A. Campbell, Clerk of the Superior Court within and for said County of Suffolk, hereby certify that the printed pages hereto annexed, numbered one to twenty-two inclusive [*meaning in this print pages 1 to 24 above*] are true copies of the papers made a part of the case of INTERNATIONAL TRUST COMPANY *vs.* SAMUEL A. MYERS ET ALS., and numbered 14826 Equity, on the files of said Court, or so much thereof as was necessary fully to present the questions of law to the Supreme Judicial Court of said Commonwealth, prepared by me and transmitted to said Supreme Judicial Court in accordance with the laws of said Commonwealth.

I further certify that pages numbered twenty-three to twenty-five inclusive [*meaning in this print pages 25 to 27 above*] thereto annexed are true copies of the rescript of said Supreme Judicial Court made in said case, and the Final Decree of said Superior Court entered in accordance with said rescript.

WITNESS my hand and the seal of said Superior Court, at Boston, in said County and Commonwealth, this thirteenth day of May, A. D. 1925.

[Seal]

FRANCIS A. CAMPBELL,
Clerk.

INTERNATIONAL TRUST COMPANY *vs.* SAMUEL A. MYERS & others.

Suffolk. Argued January 19, 1925. Opinion filed April 17, 1925.

Present: RUGG, C.J., BRALEY, CROSBY, CARROLL, & WAIT, JJ.

CARROLL, J. This is an appeal from a final decree dismissing the plaintiff's bill to reach and apply the interest of S. A. Myers and Harry Myers in the partnership of S. A. & H. Myers, to the payment of indebtedness arising out of their individual indorsements of a series of promissory notes. The defendants carried on business under the name of S. A. & H. Myers. The partnership gave ten notes for $2,000 each, for money borrowed from the plaintiff; ten of the notes were indorsed by Samuel A. Myers and nine by Harry Myers.

On January 27, 1917, an involuntary petition in bankruptcy was filed in the United States District Court for the District of Massachusetts. The petition alleged that "Samuel A. Myers and Harry Myers both of Brookline in the County of Norfolk, co-partners trading as S. A. and H. Myers have for the greater portion of six months next preceding the date of filing this petition, had his principal place of business at Boston . . . and owes debts to the amount of $1000"; "that said Samuel A. & Harry Myers are insolvent," and had committed an act of bankruptcy. The prayer of the petition was: "wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon Samuel A. & H. Myers, as provided . . . and that he may be adjudged by the court to be a bankrupt within the purview of said acts."

Schedules were sworn to and filed on February 10, 1917. The set filed is designated "Partnership Schedules." The schedule sets out that "Samuel A. Myers of Boston and Harry Myers of Brookline respectfully represent: — That they, [are in the] Clothing business . . . have been partners under the firm name of S. A. & H. Myers having their principal place of business at Boston . . . for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full." They alleged that Schedule A contained "a full and true statement of all the debts of said partners"; that Schedule B contained "an accurate inventory of all the property . . . of said partners." The paragraph relating to Schedules "C" "D" "E" "F," in which were to be set out the individual debts and assets, were stricken out, and each individual substituted the statement "that he has no individual debts and no individual assets except household furniture and wearing apparel to the value of $300. claimed to be exempt under Revised Laws of Massachusetts Chapter 177, Section 24." In Schedule "A" of the firm debts, the International Trust Company appears as a creditor for $20,000. But the trust company does not appear in any schedule as a creditor on account of the indorsements of each of the individuals.

On February 10, 1917, there was filed a petition for a meeting of creditors to consider an offer in composition of forty per cent upon all unsecured debts. This petition was "In the matter of Samuel A. Myers and Harry Myers" and was signed Samuel A. Myers and Harry Myers. On March 3, 1917, an offer in composition was filed, "In the matter of Samuel A. & Harry Myers." The offer was addressed to the court and "Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid." This offer alleged among other things "that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors." On March 23, 1917, they applied for

confirmation of the composition and alleged that they "have filed in court a schedule of their property and a list of their creditors, as required by law, they offered terms of composition to their creditors." On May 28, 1917, the composition was confirmed.

There was no adjudication of bankruptcy; the plaintiff proved the notes against the partnership for $20,000 and received the payment in composition. No payments were received on account of the individual indorsements on the notes. The indorsements on the notes by Samuel A. Myers and Harry Myers, created individual obligations, separate and distinct from the firm obligations. "A partner indorsing individually was a party different from the partnership and thereby might incur a double liability arising from the two distinct contracts." "In this aspect and for this purpose the partnership may be treated as personified and as an entity separate from the individuals who compose it." *Fourth National Bank* v. *Mead*, 216 Mass. 521, 523, 524. See now the uniform partnership act, St. 1922, c. 486, § 15: "any partner may enter into a separate obligation to perform a partnership contract." The involuntary petition represented that the defendants, as copartners under the name of S. A. & H. Myers, were insolvent. It bore the indorsement "S A & H Myers Debtors." The schedule filed by the defendants set out partnership assets and partnership debts. The individual liability upon which the action is predicated was not mentioned in the schedules or the composition as approved by the court.

In our opinion it cannot be said that because the offer was signed Samuel A. Myers and Harry Myers, and the confirmation of the compromise concerned "the matter of Samuel A. Myers and Harry Myers," it therefore affected the defendants' liability for their individual debts. Not only was the petition against the defendants as copartners "trading as S. A. & H. Myers" having the "principal place of business at Boston," but the only assets and debts listed in the schedule are those of the firm. They swore they had no individual debts or assets, the partnership schedules stating, that the debtors named in the "foregoing petition"

make oath that the statements therein were true. The indorsement on the schedule reads "Debtors' Schedules Samuel A. Myers and Harry Myers as S. A. & H. Myers." The offer in composition incorporated the schedule of creditors, and it was to those creditors who were listed in the schedule, that is, the partnership creditors, to whom the offer was made. The defendants made no offer of compromise to individual creditors or to any creditors except those whose names were upon the schedule. The confirmation of the composition was based on the schedule of creditors filed.

A composition partakes of the nature of a contract. *Cumberland Glass Manuf. Co.* v. *De Witt*, 237 U. S. 447, 453; citing *In re Lane*, 125 Fed. Rep. 772, 773. *Nassau Works* v. *Brightwood Co.* 265 U. S. 269. *In re Adler*, 103 Fed. Rep. 444. "A law which compels a creditor, against his will, to accept in discharge of his debt just what the debtor sees fit to offer, should be strictly construed." *In re Rider*, 96 Fed. Rep. 808, 809, 810; see *In re Kinnane Co.* 221 Fed. Rep. 762, 766. *In re Goldstein*, 213 Fed. Rep. 115, 116. Under the bankruptcy act of 1874, it was decided by this court that "a creditor, whose name or the amount of whose debt is not truly stated in the debtor's schedule, is not affected or prejudiced by the composition." *Stone* v. *Simonds*, 131 Mass. 457, 462. See *Hewes* v. *Rand*, 129 Mass. 519; *Ex parte Trafton*, 2 Lowell, 505, 506. If the composition was in the nature of a contract the plaintiff was a party to it only to the extent in which its claim against the partnership was concerned; it was not recognized as an individual creditor; no offer was made to it as the holder of a claim against the individuals. In this respect it was a stranger to the offer; it stood as any other individual creditor whose demand was not listed, to whom no offer of compromise was made and who entered into no bargain with the defendants. See *Curlee Clothing Co.* v. *Hamm*, 160 Ark. 483.

Confirmation of the composition discharges the bankrupt from his debts. Bankruptcy Act, § 14c. *McClintic-Marshall Co.* v. *New Bedford*, 239 Mass. 216, 223, 224. In *Francis* v. *McNeal*, 228 U. S. 695, creditors filed a petition in bank-

ruptcy against Francis and two others, alleging they were bankrupt individually and as a firm. Francis was found to be a partner. McNeal was the receiver and was appointed trustee; the firm was adjudicated bankrupt. McNeal brought a petition asking that the separate estate of Francis be turned over for administration in bankruptcy; his petition was granted. In the course of the opinion (page 701) it was said: "it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several." In that case there was an adjudication of bankruptcy and no question arose concerning the effect of a discharge upon the individual debts of Francis apart from his individual liability for the firm debts. In *Abbott* v. *Anderson*, 265 Ill. 285, the question was, Did the adjudication in bankruptcy of the insolvent partnership carry into bankruptcy the members of the partnership as individuals? It was held that the adjudication did have this effect, that the approval of the composition discharged the partners as well as the firm of the partnership's debts. In that case there was an adjudication of bankruptcy and the question of the discharge of the individual members for their individual debts apart from the firm debts was not involved. See in this connection *Liberty National Bank* v. *Bear*, 265 U. S. 365, *Carter* v. *Whisler*, 275 Fed. Rep. 743.

It has also been held that the discharge of a partnership has no effect upon the individual liability of the partners. *Horner* v. *Hamner*, 249 Fed. Rep. 134. See *In re Sugar Valley Gin Co.* 292 Fed. Rep. 508, 509. Cf. *McClintic-Marshall Co.* v. *New Bedford, supra.* It was said by Hough, J. in *In re Pincus*, 147 Fed. Rep. 621, 625, that "Individual discharges cannot be granted under an adjudication against the partnership only." See *Curlee Clothing Co.* v. *Hamm, supra; In re E. W. Adams & Co.* 283 Fed. Rep. 431, 433.

The question presented on this record is the liability of the defendants not for the firm debts but for their own individual debts, there having been no adjudication in bankruptcy, the offer of compromise including the firm creditors only. Assuming, when a partnership is adjudicated bank-

rupt the members are brought into the proceeding, and if a discharge is granted that the debts of the partners can no longer be enforced, it does not follow from this, in our opinion, if there is no adjudication of bankruptcy, the claims of all creditors of all classes not being before the court for adjustment, the individual creditors having no notice of the proceeding and no opportunity to be heard, and the petition being brought by partnership creditors that a confirmation of an offer of compromise to the firm creditors alone, will prevent the individual creditors from enforcing their demands against the defendants for their personal and individual debts. The confirmation of the compromise followed the pleadings in the case, it related to partnership demands only; it did not discharge the defendants as individual indorsers. See in this connection *United States* v. *Cox*, [March 2, 1925]; *United States* v. *Kaufman*, [March 2, 1925]; *In re Farley*, 115 Fed. Rep. 359.

The decree for the defendants must be reversed and a decree entered for the plaintiff. The form of the decree is to be settled in the Superior Court.

*So ordered.*

*J. R. Lazenby*, for the plaintiff.

*E. F. McClennen*, (*W. W. Johnson* with him,) for the defendants.

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COMMONWEALTH OF MASSACHUSETTS.

---

Boston, May 7, 1925.

I certify the foregoing to be a true copy of the opinion of the Supreme Judicial Court in the case of *International Trust Company* v. *Samuel A. Myers & others* decided on the sixteenth day of April, 1925.

Ethelbert V. Grabill

*Reporter of Decisions.*

IN THE SUPREME COURT OF THE UNITED STATES
COMMONWEALTH OF MASSACHUSETTS.

SUFFOLK, ss. SUPERIOR COURT IN EQUITY
No. 14826.

INTERNATIONAL TRUST COMPANY

*v.*

SAMUEL A. MYERS, HARRY MYERS, AND S. A. & H. MYERS PARTNERSHIP.

*STIPULATION.*

For the purposes of a petition to the United States Supreme Court for certiorari which the defendants have asserted their intention to bring with respect to the above-entitled case, it is stipulated and agreed that the entire record to be certified for said petition or to be returned in case the same is granted, shall be the printed record as prepared in this Superior Court for entry in the Supreme Judicial Court, and opinion of the Supreme Judicial Court, and rescript from the Supreme Judicial Court to the Superior Court, and the final decree in this case entered on or about May 4, 1925, that Exhibit No. 2, Creditors' Petition, and Exhibit No. 3, Debtors' Schedules, shall not be printed but shall be transmitted to the United States Supreme Court as part of the record, and that no other part of the record need be included.

May 7, 1925.

JOHN R. LAZENBY,
Attorney for Plaintiff.

EDWARD F. McCLENNEN,
Attorney for Defendants.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 1, 1925

The petition herein for a writ of certiorari to the Superior Court for the County of Suffolk, State of Massachusetts, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7674)

SUPREME COURT OF THE UNITED STATES

(OCTOBER TERM, 1924.)

---

SAMUEL A. MYERS AND HARRY MYERS
S. A. & H. MYERS

*v.*

INTERNATIONAL TRUST COMPANY

---

**PETITION FOR WRIT OF CERTIORARI**
**TO**
**THE SUPERIOR COURT FOR THE COUNTY OF SUFFOLK**
**AND COMMONWEALTH OF MASSACHUSETTS**

---

*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioners Samuel A. Myers and Harry Myers, co-partners as S. A. & H. Myers of Boston, in the County of Suffolk and Commonwealth of Massachusetts, respectfully petition this Court for a writ of certiorari to require that there be certified to this Court for review and determination the cause the record of which remains in the Superior Court for the County of Suffolk and Commonwealth of Massachusetts, No. 14826 in Equity, wherein your petitioners were the defendants and the respondent, the International Trust Company — a corporation organized under the laws of the Commonwealth of Massachusetts and having a usual place of business in said Boston, was the plaintiff, and wherein final judgment

has been entered against your petitioners pursuant to a decision of the Supreme Judicial Court for the said Commonwealth, rendered in April, 1925.

This suit was begun September 26, 1917 to recover from the defendants the unpaid balance of ten promissory notes. The defendants answered that the suit was discharged by a discharge in bankruptcy under the bankruptcy laws of the United States consequent upon the confirmation of a composition which the defendants had offered in bankruptcy. The Superior Court decided that the question involved was a federal question, to be determined by the federal law, and that the case was controlled by the decision in *Francis* v. *McNeal*, 228 U. S. 695, and that the confirmation of the composition was a bar. On appeal, the Supreme Judicial Court reversed this. In accordance with the rescript of this Court, a final decree was entered in the Superior Court on or about May 4, 1925 against the defendants for the amount of the debt claimed.

The composition proceeding was begun by the filing in the District Court of the United States for the District of Massachusetts in Bankruptcy, a petition as follows:—

"In the matter of

| | |
|---|---|
| Samuel A. Myers and Harry Myers<br>Alleged Bankrupts. | In Bankruptcy<br>Number 24,571. |

To the Honorable James M. Morton, Jr.,

Judge of the District Court of the United States for the District of Massachusetts.

The above-named bankrupts respectfully represent that a composition of forty per cent, upon all unsecured debts not entitled to a priority Twenty per cent in cash and two notes for ten per cent each, payable in three and four months from date, in satisfaction of their debts is to be proposed before adjudication by them to their creditors, as provided by the Acts of Congress relating to Bankruptcy, and they verily believe that the said composition will be accepted by a majority in number and in value of their creditors whose claims are allowed.

Wherefore, they pray that a meeting of their creditors may be duly called to act upon said proposal for a composition, according to the provisions of said Acts and the rules of Court.

Samuel A. Myers,
Harry Myers.

Subscribed and sworn to before me this twelfth day of February A. D. 1917.

Samuel O. Reinstein,
Justice of the Peace."

It will be observed that this offer does not mention the firm of S. A. & H. Myers, and does not limit the offer to any class of creditors whether firm or individual. This petition was endorsed on the back—

"In the matter of
Samuel A. Myers and Harry Myers
Alleged Bankrupts."

The offer to which this petition refers was in text:

"Respectfully represents Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk, and district aforesaid:— that the said Samuel A. Myers & Harry Myers have been examined in open Court at a meeting of their creditors, that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts; and that they now offer the following terms of composition before adjudication to creditors, to wit:—

"To pay all claims entitled to priority in full, and to pay all unsecured creditors forty cents on the dollars of their just claims, 20% in cash and two notes of 10% each, payable in three and four months, respectively. The consideration to be thus paid, and the money necessary to pay all debts which have priority, and the costs of the

proceedings, to be deposited in the National Merchant's Bank of Boston, in accordance with the law in such cases.

Samuel A. Myers,
Harry Myers."

This was endorsed and filed in the same case.

It will be noted that this does not name the firm, or the place of business of the firm. It is not limited to any class of creditors, whether firm or individual.

The discharging confirmation order was:—

"In the Matter of
Samuel A. Myers
and
Harry Myers
Alleged Bankrupts."

On January 22, 1917 there had been filed an involuntary petition which alleged that "Samuel A. Myers and Harry Myers both of Brookline in the County of Norfolk, co-partners trading as S. A. & H. Myers" were insolvent and had committed acts of bankruptcy, "wherefore your petitioners pray that service of this petition with a subpoena may be made upon Samuel A. Myers and H. Myers as provided * * * and that he may be adjudged by the Court to be a bankrupt."

On February 10, 1917 the defendants had filed on the standard form in use in the Massachusetts District, a schedule of all their firm creditors and of all their individual creditors. The schedule set out that "Samuel A. Myers of Boston and Harry Myers of Brookline, respectfully represent that they are in the clothing business * * * have been partners under the firm name of S. A. & H. Myers having their principal place of business at Boston." Schedule A contained the debts of the partners. Schedule C was designed for the debts of Samuel A. Myers. Against this paragraph he wrote "that he has no individual debts." Schedule E, designed for the individual debts of Harry Myers, was similarly treated. In schedule A appeared the name and address of the International Trust Company as a creditor on notes for $20,000.

The notes referred to were signed "S. A. & H. Myers" payable to the order of "ourselves." They were endorsed on the back "S. A. & H. Myers, S. A. Myers, Harry Myers." They were given to the plaintiff in the ordinary course of the business of S. A. & H. Myers.

The composition was confirmed, resulting in a discharge in bankruptcy. The plaintiff sued, claiming to avoid the discharge and prevailed in the Supreme Judicial Court of Massachusetts (241 Mass. 50). The Supreme Court of the United States reversed this decision, and held that the discharge was a bar (263 U. S. 64). The plaintiff now claims that it is not a bar to individual liability of Samuel A. Myers and of Harry Myers. This is the claim which has failed in the Superior Court and prevailed in the Supreme Judicial Court of Massachusetts.

(1) In construing this offer of composition and petition for confirmation thereof to the United States District Court, the State Court has ruled that the offer was not the offer of "Samuel A. Myers of Boston" and "Harry Myers of Brookline" but was the offer of the firm of "S. A. & H. Myers."

(2) The State Court has ruled that the confirmation of the composition does not discharge Samuel A. Myers and Harry Myers from "all unsecured creditors" but only from such of them as were firm creditors only.

(3) The State Court has ruled that notwithstanding the fact that the schedules were in the standard form for partnership and individual debts, yet, because on them Samuel A. Myers and Harry Myers said they had no individual debts and no individual assets, the schedules were partnership schedules only.

(4) The State Court has ruled that notwithstanding the fact that Samuel A. Myers and Harry Myers, under the caption "Samuel A. Myers and Harry Myers" and without reference to a partnership name or fact, had offered to pay "all unsecured debts," they had made no offer to individual creditors.

The reasons relied on by your petitioners for the issuance of a writ of certiorari, and upon which your petitioners believe that this petition ought to be granted, are:—

1. That in said action the petitioners claimed a right, privilege and immunity under the constitution and statutes

of the United States, namely, that a discharge in bankruptcy resulting from the confirmation of an offer in composition made by "Samuel A. Myers and Harry Myers" to pay "all unsecured creditors" discharged Samuel A. Myers and Harry Myers from the claims of all unsecured creditors including the claim of the International Trust Company notwithstanding the fact that that creditor's claim was listed only once and then among other claims against Samuel A. Myers and Harry Myers as partners.

2. That the said decision is in conflict with decisions of this Supreme Court of the United States and of the federal courts and of the courts of other states on the same question, namely, *Francis* v. *McNeal*, 228 U. S. 695, 701; *Abbott* v. *Anderson*, 265 Ill. 285 — 106 N. E. 782; *Bear* v. *Liberty National Bank* (C. C. A. 4th) 285 Fed. 703, 705; *In re Forbes*, (D. C. Mass.) 128 Fed. 137, 139; and also involves a question of general public importance, namely, the rights of persons discharged on confirmation of composition under the bankruptcy act of the United States pursuant to an offer in composition in a proceeding which but for the offer would have gone to adjudication against the bankrupts as partners and as individuals with the resultant discharge of them in all capacities.

Your petitioners present herewith a certified copy of the entire record in said cause, including the opinion of the Supreme Judicial Court for the Commonwealth of Massachusetts.

Wherefore your petitioners respectfully pray that a writ of certiorari be issued to the end that the said cause may be reviewed and determined by this Honorable Court as provided by law, and that the said decision of the said Supreme Judicial Court of the Commonwealth of Massachusetts and the judgment of the Superior Court for the County of Suffolk in said Commonwealth pursuant to the rescript of said Supreme Judicial Court, be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Court may seem just and proper.

SAMUEL A. MYERS
HARRY MYERS

By their Attorney,
EDWARD F. McCLENNEN.

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk, ss.

Edward F. McClennen being duly sworn deposes and says that he is the counsel for the above-named petitioners and that the matters set out in the foregoing petition are true of his own knowledge.

EDWARD F. McCLENNEN.

Subscribed and sworn to before me this eighth day of May, 1925.

ARTHUR E. WHITTEMORE (Official Seal)
Notary Public.
My commission expires Nov. 1, 1929

I do hereby certify that the foregoing petition is presented in good faith and not for the purpose of delay and that in my opinion the case is a proper one for the issuance of the writ of certiorari prayed for.

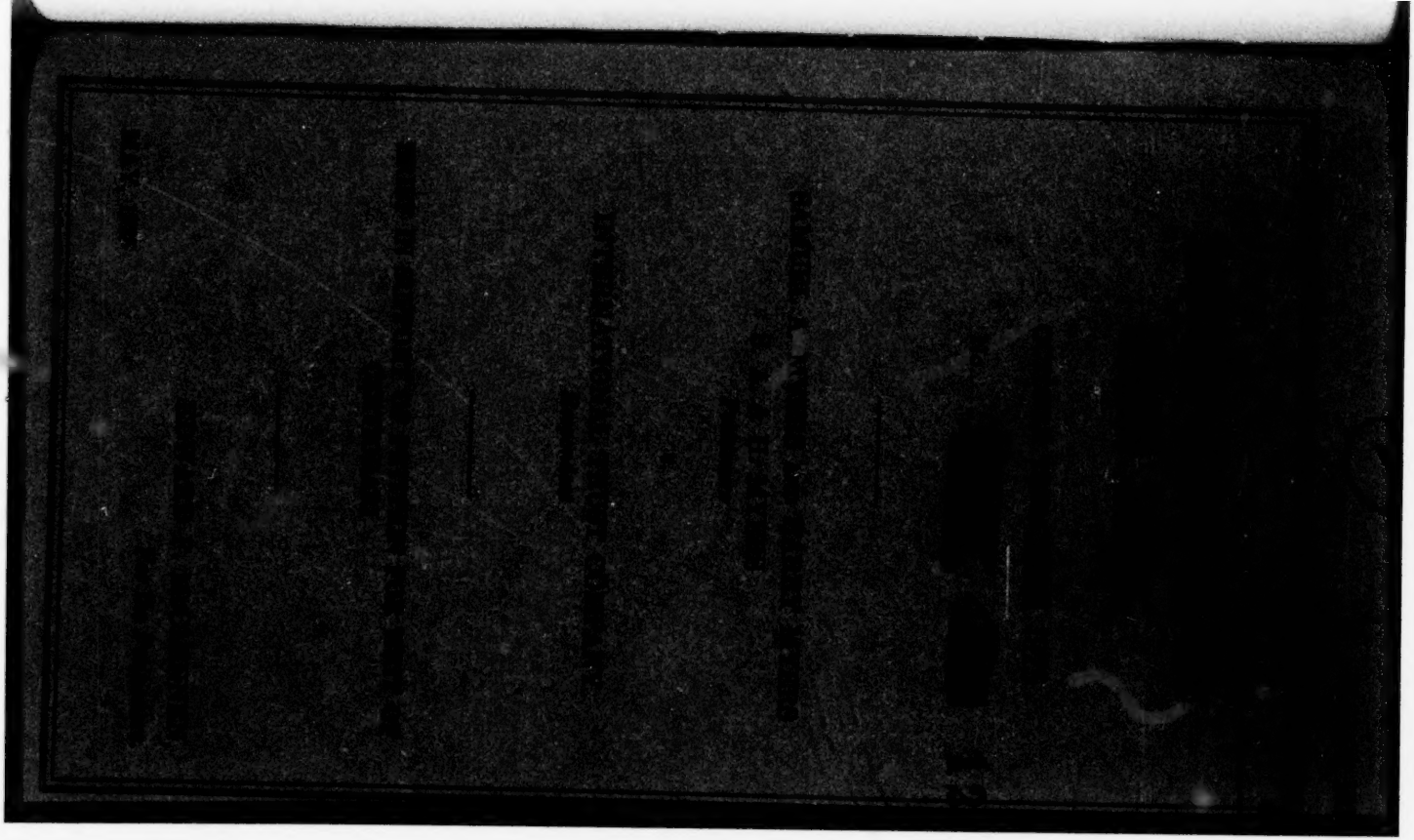
EDWARD F. McCLENNEN,
Counsel for the Petitioners.

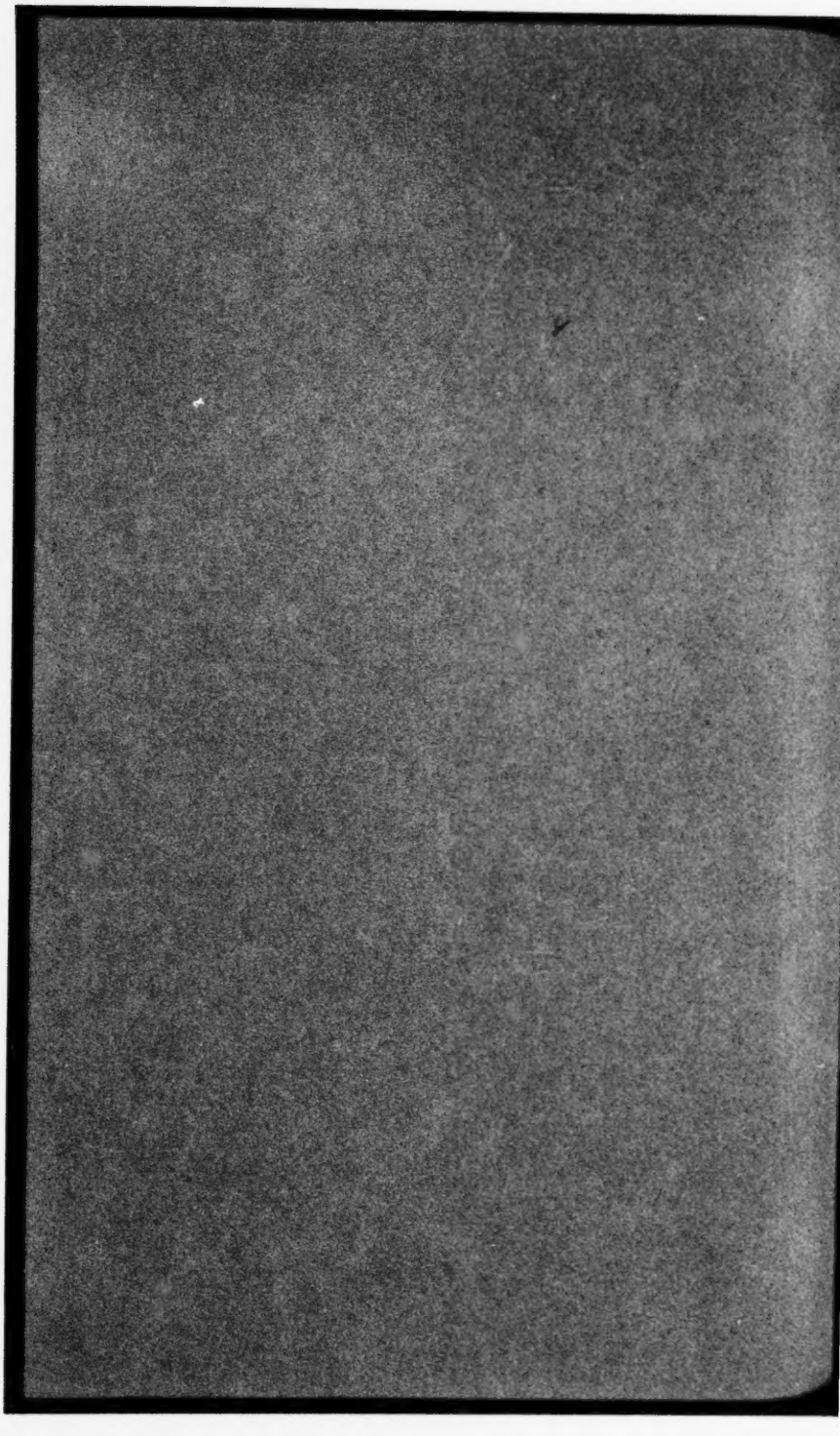
ACCEPTANCE OF SERVICE

International Trust Company, by its attorney of record, hereby accepts service of notice that a petition for certiorari in the above-entitled cause will be applied for in the Supreme Court of the United States on May 25th, 1925 and will be submitted to this Court at the opening of the Court at its first sitting thereafter, or as soon thereafter as counsel can be heard in pursuance of its rules in such cases made and provided, and that said respondent has received a copy of this petition and of the brief in support thereof and of the entire transcript of the record of the case.

Dated this 11th day of May 1925.

JOHN R. LAZENBY,
Attorney for Respondent.





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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1924

No.

---

SAMUEL A. MYERS AND HARRY MYERS
S. A. & H. MYERS
*Petitioners*

*v.*

INTERNATIONAL TRUST COMPANY
*Respondent*

---

**BRIEF**
**IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**
**FILED MAY 1925**

The facts are succinctly stated in the petition which this brief accompanies.

## GROUNDS FOR THE WRIT

The petitioners have a discharge in bankruptcy under the Bankruptcy Act of the United States, resulting from the confirmation of an offer in composition made before adjudication by "Samuel A. Myers of Boston" and "Harry Myers of Brookline" to pay "all unsecured creditors." This discharge gave the petitioners a right, privilege or immunity under the constitution and the bankruptcy statutes of the United States against the claim of the respondent who was an "unsecured creditor" of Samuel A. Myers and Harry Myers, both jointly and severally, for one debt only of $20,000 on ten promissory notes which appeared on their schedule of creditors

in the proper amount, against the correct name and address of the creditor International Trust Company. The decision of the Supreme Judicial Court of Massachusetts deprives the petitioners of this right.

1. The failure of the state court to accord to the discharge its full efficacy as interpreted by the courts of the United States, deprives the petitioners of a federal right and is ground for the exercise of the jurisdiction of the Supreme Court of the United States.

*Myers* v. *International Trust Co.*, 263 U. S. 64.

*Friend* v. *Talcott*, 218 U. S. 680; 228 U. S. 27.

2. The question as to the effect upon the individual liability of partners resulting from the confirmation of an offer in composition by the individual partners, is of general public importance.

3. The decision of the state court creates a conflict with the decisions of the Supreme Court of the United States and of the federal courts and of the courts of other states on the same question as more fully appears below.

## THE DISCHARGE IN BANKRUPTCY IS A BAR TO THIS SUIT

The order confirming the composition which gave the discharge, was entered "In the matter of Samuel A. Myers and Harry Myers alleged bankrupts."

"The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge."

*Bankruptcy Act*, Sec. 14 (c); *Compiled of 1916*, Sec. 9598.

"The effect of the composition proceeding is to substitute composition for bankruptcy proceedings in a certain sense,

and in a measure to supersede the latter proceeding, and to reinvest the bankrupt with all his property free from the claims of his creditors."

*Cumberland Glass Co.* v. *DeWitt*, 237 U. S. 447, 454.

The District Court of the United States for the District of Massachusetts "has consistently refused to make the adjudication of a partnership unless all the partners be adjudged bankrupt at the same time."

*In re Forbes*, 128 Fed. 137, 140; approved at 228 U. S. 701.

"We do not perceive that the clause imports that the partnership could be in bankruptcy, and the partners not."

*Francis* v. *McNeal*, 228 U. S. 695, 701.

"On the other hand it would be an anomaly to allow proceedings in bankruptcy against joint debtors from some of whom, at any time before, pending, or after the proceeding, the debt could be collected in full."

*Francis* v. *McNeal*, 228 U. S. 701.

"Finally, it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several. We say the same persons, for however much the difference between firm and member under the statute be dwelt upon, the firm remains at common law a group of men and will be dealt with as such in the ordinary courts for use in which the discharge is granted."

*Francis* v. *McNeal*, 228 U. S. 701.

The first question before the Massachusetts Court was the construction consonant with the federal law, to be placed upon an offer in composition filed in a court in which the foregoing quoted rules prevailed. Of course the offer is to be read in the light of those rules of the forum in which and to which the petitioners spoke. Their petition is quoted in full

in the present petition for certiorari. It is presented by "Samuel A. Myers of Boston" and "Harry Myers of Brookline." It is an offer to pay "all unsecured creditors." The firm is not mentioned. No class of creditors — firm or individual — is mentioned. The petition read by itself leaves no doubt, and raises no doubt, that the two individuals were speaking about "all" their creditors.

If one departs from the petition itself and looks at the surroundings, there is nothing in them to indicate that these men, when they said "all," meant not "all" but only "firm."

If this composition petition had not been filed, there would have been, according to the law and the rules prevailing in the Massachusetts District, an adjudication of these individuals as bankrupt, both as partners and as individuals, and all their individual assets as well as the firm assets would have been drawn into the Bankruptcy Court and the discharge which these individuals would have received would have been a discharge from all liability — both firm and individual.

Manifestly, the composition discharge sought by the petitioners was to be co-extensive with the discharge which they would receive in the ordinary course of bankruptcy.

The creditors' petition, as required by the rules of the District, petitioned as to each partner "that **he** may be adjudged by the court to be a bankrupt." The Bankruptcy Act gave each of them a right to offer a composition before adjudication.

> *Bankruptcy Act*, Sec. 12, as amended June 25, 1910, Ch. 412, Sec. 5; *Compiled*, Sec. 9596.

These two men had no assets except their firm assets. They had no liabilities except their firm liabilities for some of which they had individually endorsed. Under these circumstances, of course, their petition meant that they were asking for such a composition as would give them as much of a discharge as

they would get in the absence of composition in the ordinary course of bankruptcy.

They had filed schedules of their debts and assets — both firm and individual, as required by the rules of the District. A schedule does not cease to be a schedule of individual debts or of individual assets merely because the bankrupt says that he has none such. By this statement they were on their oath in the Bankruptcy Court, that they had no creditors other than those that appeared on the firm sheet, and no assets other than those that appeared on the firm sheet. If these statements were erroneous, they were open to prosecution, not because they had filed no schedules but because they had filed false schedules. If they had filed no schedules of individual debts or of individual assets they would not be open to prosecution for filing false ones. Therefore, they had filed schedules of all their debts and assets — both firm and individual. In their composition offer they say, without any limitation or exception, "that they have filed a schedule of their property and a list of creditors to be filed by the bankrupts." In the court in which this statement was made, this meant a schedule of their individual and firm assets and liabilities. As they had no assets whatever, except those in the firm, and no liabilities whatever, except those set out as liabilities of the partnership, including the debt to the International Trust Company for the $20,000, it is not surprising that they did not put that debt upon a separate sheet. It was down as a debt of $20,000 on notes to the International Trust Company. It does not say whether as maker or endorser. There was but one sum of $20,000. As partners in the firm, they were jointly and severally liable for that amount of money. They were not any more severally liable for it because they had put their individual names on the back of the notes. It is true that in a case where the partners had assets outside the partnership, individual endorsements would have a value for purposes of proof; but where they had none, the endorsements added nothing. They owed these notes for different reasons, but they did not owe them twice over.

Note the effect of the ruling of the State Court:—The defendants wanted a real thing, namely, such a settlement in

composition with their creditors that they could keep their assets and go on in business. If the ruling of the state court is right, then immediately upon the confirmation of the composition, instead of keeping their assets, those assets freed of the firm liabilities would be seizable by appropriate proceedings by the same creditors because of the individual endorsement liability of the defendants. As this would defeat the obvious purpose of the defendants, it emphasizes that they meant just what they said when they — "Samuel A. Myers of Boston" and "Harry Myers of Brookline" — offered to pay "all unsecured creditors."

The claims of "all unsecured creditors" including the plaintiff-respondent, were discharged, both with respect to the joint and with respect to the several liability.

*Bankruptcy Act*, Sec. 14, supra.

*Francis* v. *McNeal*, 228 U. S. 695, 701.

*Abbott* v. *Anderson*, 265 Ill. 285; 106 N. E. 782.

*Bear* v. *Liberty National Bank*
(C. C. A. 4th) 285 Fed. 703, 705;
reversed on other grounds, 265 U. S. 365.

In *Bear* v. *Liberty National Bank*, the creditor, claiming a lien, held a judgment on notes made by the partnership and **endorsed by the individual partners.** The court, in holding that an adjudication of bankruptcy against the partnership was of necessity an adjudication against the individuals, said (705):—"It cannot be that the bankruptcy of the partnership carries the partners into the proceeding with their assets and liabilities for the purpose of proving debts, adjusting equities, preventing preferences generally, and distributing to creditors the individual as well as partnership assets, and yet does not carry them in for the two other main purposes of the bankruptcy statute, namely, protecting creditors against the preference of liens acquired within four months of bankruptcy, and

**discharging the debtor from his debts."** (*Type not heavy in original.*)

The decision of the Supreme Judicial Court of Massachusetts is directly in conflict with this on a question of general public importance. Many men in business who have made the fresh start favored by the Bankruptcy Act, are at peril if this decision of the state court stands.

Respectfully submitted,

EDWARD F. McCLENNEN,
*For the Petitioners*

May, 1925.

DENIED OCT 26 1925

Office Supreme Court,
FILED
JUN 13 192
WM. R. STANS
CL

# Supreme Court of the United States

OCTOBER TERM, 1924

No. [redacted] 122

SAMUEL A. MYERS and HARRY MYERS
AS S. A. & H. MYERS,

*Petitioners,*

v.

INTERNATIONAL TRUST COMPANY,

*Respondent.*

## MOTION FOR RECONSIDERATION.

JOHN R. LAZENBY,
For Respondent.

## Notice.

## Supreme Court of the United States

OCTOBER TERM, 1924

| | |
|---|---|
| SAMUEL A. MYERS and HARRY MYERS<br>S. A. & H. MYERS<br><br>v.<br><br>INTERNATIONAL TRUST COMPANY. | No. 1256 |

SIR:

PLEASE TAKE NOTICE that on the 8th day of June, 1925, the Supreme Court of the United States made an order granting leave to present a petition for a rehearing of the order granting writ of certiorari within ten days; that on or about the 5th day of June, 1925, an original motion was filed, of which the annexed is a copy; that said motion or petition will be filed forthwith and presented in accordance with said order.

Dated, June 10th, 1925.

JOHN R. LAZENBY,
Attorney for International Trust Company.

To:

EDWARD F. MCCLENNEN, Esq.,
Attorney for the Petitioners,
S. A. & H. Myers,
161 Devonshire Street,
Boston, Massachusetts.

SUPREME COURT OF THE UNITED STATES

OCTOBER, 1924, TERM

SAMUEL A. MYERS and HARRY MYERS as S. A. & H. MYERS,
Petitioners,

vs.

INTERNATIONAL TRUST COMPANY,
Respondent.

## Motion for Reconsideration.

Respectfully represents the respondent, International Trust Company, that at the trial of the above entitled case, in the Superior Court for the County of Suffolk, Commonwealth of Massachusetts, there were admitted in evidence as part of the case of the International Trust Company, the then plaintiff, the Creditors' Involuntary Petition filed in the United States District Court for the District of Massachusetts and also the Debtors' Schedules filed in the same Court, which documents were marked Exhibits 2 and 3 respectively, that when the record on appeal to the Supreme Judicial Court for the Commonwealth of Massachusetts was prepared and printed, it was stipulated between the parties that said Exhibits 2 and 3 should not be printed, but should be produced at the time of argument, in said Supreme Judicial Court; that at the argument in said Supreme Judicial Court, said exhibits were produced and handed to Rugg, C. J. Said exhibits were part of the record.

That the exhibits are of vital importance to the case of the International Trust Company in that the Creditors' Petition shows against whom the bankruptcy proceedings were brought and the Debtors' Schedules show what debts were listed and the form in which the Schedules were prepared.

That after the decision of the said Supreme Judicial Court reversing the said Superior Court, and a decree on the mandate entered in the said Superior Court, Edward F. McClennen, counsel for the petitioners, gave notice of his intention to apply to this Court for a writ of certiorari and was requested by the International Trust Company to file with the petition as part of the record said Exhibits 2 and 3; the petition and record were filed with this Court on or about May 21, 1925, and presented on May 25, 1925, and this Court granted the writ on June 1, 1925.

That on June 3, 1925, the respondent, the International Trust Company, discovered that the petitioners had not filed with the petition and record said Exhibits 2 and 3, and the said Trust Company thereupon obtained them and now files them with this motion.

That said Exhibits were a necessary part of the record in this case, that the record as filed was incomplete and was known to the petitioners to be incomplete, that an inspection and examination of said Exhibits were necessary for a proper consideration of the petition for a writ of certiorari, that fairness and justice required that the record as submitted to the Supreme Judicial Court of the Commonwealth of Massachusetts be submitted to this Court to enable this Court to consider what evidence had been presented by the International Trust Company and what question of law was decided by the said Supreme Judicial Court.

That the order granting said writ of certiorari was made by this Court upon an incomplete and improper record as aforesaid;

WHEREUPON the respondent the International Trust Company moves that this Court reconsider said petition for certiorari, having now before it the complete record in the case.

INTERNATIONAL TRUST COMPANY,
By JOHN R. LAZENBY,
Its Attorney.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.:

I, John R. Lazenby, being duly sworn, say that on the fourth day of June, 1925, I served a copy of the above motion by leaving a copy thereof at the office of Edward F. McClennen, attorney for the petitioners, at #161 Devonshire Street, Boston, Massachusetts, and that said motion would be filed forthwith in the office of the Clerk of the Supreme Court and presented on Monday, June 8, 1925, to the Court or at the first Court day thereafter.

JOHN R. LAZENBY.

Subscribed and sworn to before me this 4th day of June, 1925.

STUART MONTGOMERY
Notary Public
My commission expires Nov. 3, 1927.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

A copy of the above notice and motion was served by me upon Edward F. McClennen, by leaving at his office, 161 Devonshire Street, Boston, Massachusetts, two copies of the same on the 1st day of June, 1925.

Stuart Montgomery

Subscribed and sworn to before me this 1st day of June, 1925.

Elmer R. Beeler
Notary Public
Notary Seal

my commission expires Feb 27, 1931.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss:

A copy of the memorandum in support of the within motion was served by me upon Edward F. McClennen, by leaving at his office, 161 Devonshire Street, Boston, Massachusetts, two copies of the same, on the 1st day of June, 1925.

Stuart Montgomery

Subscribed and sworn to before me this 1st day of June, 1925.

Elmer R Beeler
Notary Public
Notary Seal

my commission expires Feb 27 1931

FILED
JUN 13 1925
WM. R. STANSBURY
CLERK

# Supreme Court of the United States

OCTOBER TERM, 1924

No. 1256 [redacted]8 122

SAMUEL A. MYERS and HARRY MYERS
AS S. A. & H. MYERS,

*Petitioners,*

v.

INTERNATIONAL TRUST COMPANY,

*Respondent.*

## MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION.

JOHN R. LAZENBY,
For Respondent.

# Supreme Court of the United States

OCTOBER TERM, 1924.

| | |
|---|---|
| SAMUEL A. MYERS and HARRY MYERS AS S. A. & H. MYERS, v. INTERNATIONAL TRUST COMPANY. | No. 1256 |

## Memorandum in Support of Motion for Reconsideration.

The International Trust Company respectfully asks for a reconsideration of the order granting the writ of certiorari in the above case, on the ground that at the time when the Court considered the petion it did not have before it the complete record, as two of the essential exhibits were omitted.

The partnership of S. A. & H. Myers, for a loan, gave ten (10) notes totalling the sum of $20,000., to the International Trust Company and Samuel Myers endorsed the ten and Harry Myers endorsed nine.

This suit was brought to recover on the endorsements. A petition in Bankruptcy was filed against the partnership in the United States District Court for the District of Massachusetts. This petition was Exhibit 2 in the case.

Debtors' Schedules were filed by the debtors, in which the Myers swore they had no individual debts, and set out the International Trust Company as a creditor to the extent of $20,000. for notes. The

Trust Company was not listed as a creditor on account of the endorsements. These Schedules were Exhibit 3.

There was an offer in composition in which the alleged bankrupts stated that they had filed "a list of creditors to be filed by bankrupts" (Exhibit 5, Record, p. 19).

At the argument before the Supreme Judicial Court of Massachusetts, these Exhibits 2 and 3 were presented to the Court in conformity with the stipulation set forth on page 17 of the Record.

When the record for the petition for a writ of certiorari was prepared a stipulation as to the contents of the record was entered into, in which it was agreed, among other things, "that Exhibits No. 2, Creditors' Petition, and Exhibit No. 3, Debtors' Schedules, shall not be printed but shall be transmitted to the United States Supreme Court as part of the record" (Record, p. 35).

These exhibits were not transmitted to this Court as part of the record and were not presented to this Court when the petition was presented. They were not before this Court at the time the petition was considered and at the time this Court granted the writ, on June 1, 1925.

On the contrary, they were obtained by the respondent from the Reporter of Decisions of the Massachusetts Supreme Judicial Court on June 3, 1925, and sent by the respondent with this motion to this Court on June 4, 1925.

These exhibits were a necessary part of the record. They are the foundation of the Trust Company's case; they were before the Massachusetts Court; they ought to have been before this Court to enable this Court to determine what Federal question was raised by the record.

The question of law involved was the effect of the confirmation of an offer in composition. It was essential to determine to what creditors the offer was made, and the petition and schedules were the only evidence of the list of creditors. The Massachusetts Court found them essential to its decision.

It needs no argument to support a request to this Court that it require that a stipulation entered into and filed in this Court be carried out.

Justice and fairness require that no part of a record be withheld from this Court, especially so when the part withheld is of such importance as these two exhibits.

Respectfully submitted,

INTERNATIONAL TRUST COMPANY,
By JOHN R. LAZENBY,
Its Attorney.

COMMONWEALTH OF MASSACHUSETTS.

Suffolk, ss:

A copy of the above memorandum in support of the motion was served by me upon Edward F. McClennen, by leaving at his office, 161 Devonshire Street, Boston, Massachusetts, two copies of the same, on the 11th day of June, 1925.

Stuart Montgomery

Subscribed and sworn to before me this 11th day of June, 1925.

Elmer A. Beeler.
Notary Public
My commission expires Feb. 27, 19

Notarial Seal.

FILED
MAY 23 1925
WM. R. STANSBURY
CLERK

# Supreme Court of the United States

OCTOBER TERM [redacted] 1925

No. [redacted] 122

SAMUEL A. MYERS and HARRY MYERS
AS S. A. & H. MYERS,

*Petitioners,*

v.

INTERNATIONAL TRUST COMPANY,

*Respondent.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

JOHN R. LAZENBY,
For the Respondent.

May, 1925.

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# Supreme Court of the United States

October Term 1924.

SAMUEL A. MYERS and HARRY MYERS, as S. A. & H. Myers,
Petitioners,

v.

INTERNATIONAL TRUST COMPANY,
Respondent.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The judgment of which complaint is made is against Samuel A. Myers individually and against Harry Myers individually. There is no judgment against the firm of S. A. & H. Myers.

This petition for certiorari is brought by the firm of S. A. & H. Myers. The firm is not aggrieved by any judgment and has no standing in this Court. There is no petition brought by the individuals before this Court.

Prior to October, 1916, the two Myers conducted a clothing business as a partnership under the firm name of S. A. & H. Myers, with a place of business at #36 Otis Street, Boston, Mass.

Beginning with October 2nd, 1916, and ending December 18th, 1916, the partnership borrowed $20,000. from the International Trust Company, giving a series of ten notes, each for $2,000.00.

The notes were drawn, "Four months after date we promise to pay to the order of ourselves" and were signed "S. A. & H. Myers." They were endorsed on the back, "S. A. & H. Myers, S. A. Myers, Harry Myers". (Exhibit 1.)

S. A. Myers personally endorsed all ten; Harry Myers endorsed nine.

On January 27th, 1917, an involuntary petition in bankruptcy was filed against the partnership alleging an act of bankruptcy by the partnership. (Exhibit 2). On February 10th, 1917, partnership schedules were filed (Exhibit 3) and also a petition for a meeting of creditors to consider a composition which was to be proposed, and on March 3rd, 1917, an offer in composition was filed (Exhibits 4 and 5). On March 23, 1917, a petition to confirm the composition was filed in which it was stated they had filed a list of creditors and on May 28th, 1917, the composition was confirmed (Exhibits 6 and 8).

There was no adjudication and no trustee was appointed.

From an examination of the involuntary petition and schedules (Exhibits 2 and 3), [which are to be filed in their original form with the record and petition] it appears that the involuntary petition was against the partnership; that the schedules were endorsed "Debtor's schedules, Samuel A. Myers and Harry Myers as S. A. & H. Myers of Boston, Mass., residence 36 Otis Street"; that the International Trust Company was listed among the firm creditors for $20,000., on notes; that the petitioners individually filed no schedules of individual assets and liabilities, but expressly swore that they had no individual debts. The debt of the petitioners arising out of the individual endorsement of the notes was in no way scheduled.

The Trust Company brought this suit against the individuals to recover upon the endorsement of the notes by each of the individuals.

The theory on which this petition is brought is that the Trust Company is trying to hold the petitioners for the balance of a firm liability which was discharged by the confirmation of the composition; that the Massachusetts Court has refused to give effect to the discharge from the firm debts. It appears in the title to the petition and in the fact that the petition for certiorari is brought by the firm. It permeates the whole petition and brief and has led to the citation of cases which have no application to the question of law before the Massachusetts Court.

The Massachusetts Court has in no way attempted to deny the benefit of the discharge from the firm debts.

The petition states: "The composition was confirmed, resulting in a discharge in bankruptcy. The plaintiff sued, claiming to avoid the discharge and prevailed in the Supreme Judicial Court of Massachusetts (241 Mass. 509). The Supreme Court of the United States reversed this decision, and held that the discharge was a bar (263 U. S. 64). The plaintiff now claims that it is not a bar to individual liability of Samuel A. Myers and of Harry Myers. This is the claim which has failed in the Superior Court and prevailed in the Supreme Judicial Court of Massachusetts."*

From the record in *Myers* v. *International Trust Company*, 263 U. S. 64, it appears that when the

* Reference to pages of the record cannot be given, as the respondent had received no printed copy at the time this brief was written.

Myers offered their composition, the Trust Company objected on the ground that when they obtained the loans from the Trust Company, the Myers had submitted a financial statement in which the accounts receivable were set out as some $58,000, while in fact, they had assigned these accounts receivable to the Commercial Investment Trust, under an arrangement whereby they were paying at least 16% interest on the loans.

The Referee to whom the objections were sent, found that the statement was a true copy from the books and was not false and recommended the confirmation of the composition. The District Court confirmed the composition.

The Bank thereafter brought suit in the Massachusetts Superior Court to recover damages suffered by reason of being induced to lend money by representations as to the financial condition made in the statement, which representations were false. At the trial, the Myers offered in evidence the record in the Bankruptcy Court. On the authority of *Friend* v. *Talcott*, 228 U. S. 27, the Trial Court excluded the record. The jury brought in a verdict for the plaintiff.

The Myers then took the case to the Supreme Judicial Court of Massachusetts on exceptions and that Court on the same authority, dismissed the exceptions (241 Mass., 509).

On certiorari, this Court reversed the Massachusetts Supreme Court on the ground that the issue of whether the statement was false was the same and controlling in both suits—the composition and the action in the State Court—and because it was decided against the Trust Company in the first suit, the decision concludes the issue against the Company in the second suit. In other words, the Trust

Company was estopped by the decision of the referee as to the falsity (263 U. S. 64, 77).

There was no decision that the discharge granted in the Bankruptcy Court was a bar to an action of tort to recover damages suffered because of money being obtained by reason of a materially false statement intentionally made.

The present suit is against each individual to recover upon the individual endorsements on the notes on the ground that the Myers made no offer to their personal and individual creditors, but deliberately excluded them from the composition proceedings.

This is an entirely different situation from that set out in the above quotation.

## ARGUMENT.

The petitioners in their petition and brief insist that the Trust Company had only one claim, that against the partnership.

When the Bank received the notes, it received two separate and distinct obligations:

1. The promise of the firm to pay the notes as maker.

2. The promise of Samuel A. Myers and of Harry Myers, as individuals, to pay the notes if the firm did not, by reason of the endorsements.

In bankruptcy the Trust Company had two rights:

a. To prove against the firm assets and receive the dividend that firm creditors might get.

b. To prove against the individual assets and receive the dividend that individual creditors might get.

*In re Frazer,* 221 Fed. 83;
*In re McCoy,* 150 Fed. 106 (C. C. A. 7th), affirmed under title of *Chapman, Trustee,* v. *Bowen,* 207 U. S. 89;
*Reynolds* v. *New York Trust Co.,* 188 Fed. 611 at page 613 (C. C. A., 1st);

See also

*Robinson* v. *Seaboard National Bank,* 247 Fed. 667, 669; affirmed on motion for rehearing 247 Fed. 1007 (C. C. A., 3rd).

This error that the Trust Company had only one claim has led the petitioners to cite cases which are no authority for the granting of this petition.

In *Abbott* v. *Anderson,* 265 Ill. 285, where a firm creditor proved against the firm assets and then sought to recover the deficiency from the individual estates, "The sole question of law was whether the discharge of the partnership in bankruptcy discharged the partners, individually, from the partnership debts" (page 286).

*Bear* v. *Liberty National Bank,* 285 Fed. 703 (C. C. A., 3rd), was reversed by this Court on certiorari under the title *Liberty National Bank* v. *Bear,* 265 U. S. 365.

In *Liberty National Bank* v. *Bear, supra,* at page 368, it is said:

> "Upon the question whether the adjudication of the bankruptcy of a partnership involves an adjudication of the bankruptcy of the individual partners, there appears to have been a diversity of opinion in the lower federal courts.

> The decision in *Francis* v. *McNeal*, 228 U. S. 695, upon which the Circuit Court of Appeals chiefly relied, did not involve a determination of this direct question."

In *in re Forbes*, 128 Fed. 137, the only question was whether a firm could be insolvent and the partners not.

The cases relied upon by the petitioners have no bearing whatever upon the question of law passed upon by the Massachusetts Court. The offer was made before there was any adjudication and the question of insolvency of the firm did not come up. There is no conflict between the decision of the Massachusetts Court and the statutes and decisions cited in the petition and brief.

In *Nassau Works* v. *Brightwood Co.*, 265 U. S. 269, at page 271, it is said:

> "Composition is a settlement by the bankrupt with his creditors. In a measure, the composition supersedes, and is outside of, the bankruptcy proceedings."

**The decision of the Massachusetts Court does not deprive the petitioners of any right, privilege and immunity under the Constitution and Statutes of the United States.**

In *Cumberland Glass Company* v. *DeWitt*, 237 U. S. 447, at page 453, it is said:

> "The nature of composition proceedings is nowhere better stated than by Judge Lowell in *In re Lane*, 125 Fed. Rep. 772, 773, in which it is said:
>
> 'The case of composition is in some respects exceptional. *It is a proceeding voluntary on*

*both sides, by which the debtor of his own motion offers to pay his creditors a certain percentage of their claims in exchange for a release from his liabilities.* The amount offered may be less or more than would be realized through distribution in bankruptcy by the trustee. *The creditors may accept this offer or they may refuse it.* For the purposes of the composition all the creditors are treated as a class, and the will of the majority is enforced upon the minority, provided the decision of the majority is approved by the court. Except for this coercion of the minority, the intervention of the court of bankruptcy would hardly be necessary. Section 12-e (30 Stat. 550 [U. S. Comp. St. 1901, p. 3427]) provides: "Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided." Composition is thus treated, even in the act, as in some respects outside of bankruptcy. In the ordinary case of distribution by a trustee, the debtor's whole property, save that which is exempt, is applicable to the payment of his debts and belongs to his creditors, and not to him, until their claims have been satisfied. After adjudication there is no voluntary offer to pay by the bankrupt, and no *bargained* release by the creditor. The creditor takes all the debtor's property whether the debtor likes it or not. * * * The bankrupt's rights of property arise only in the event of a payment of his creditors in full. If a creditor will not prove his claim, the bankrupt does not take that creditor's share, but it goes to swell the dividends of creditors more diligent. Section 66 of the act (30 Stat. 564 [U. S. Comp. St. 1901, p. 3448]) has the same purpose, and does not apply to composition. But if the composition is paid the creditors have no further

claim upon the debtor or his property. *In a composition the creditor gets, not his share of the bankrupt's estate, but what he bargained for, and he has no right to claim more.'"*
(Italics are counsel's.)

See

*Nassau Works Company* v. *Brightwood Co.*, 265 U. S. 269.

A composition is in derogation of the common law and compels any dissenting creditor to accept the dividend satisfactory to the majority.

*In re Kinnane Co.*, 221 Fed. 762, 766.
*In re Goldstein*, 213 Fed. 115, 116.

"A law which compels a creditor, against his will, to accept in discharge of his debt just what the debtor sees fit to offer, should be strictly construed (Loveland, Bankr., p. 549; *In re Shields*, Fed. Cases No. 12784)."

*In re Rider*, 96 Fed. 808 at 809.
*In re Frear*, 120 Fed. 978, 980.
*In re Kinnane Co., supra.*

From these authorities, it is evident that the discharge granted by a composition is not "coextensive with the discharge which they would receive in the ordinary course of bankruptcy," as the petitioners urge. The discharge can go no further than to the debts which the debtor offers to pay.

The question comes down to a very simple one. To what creditors was an offer made?

It is urged that these petitioners had no liabilities except those set out as liabilities of the partnership.

The facts show that they had individual debts which could no more be proved against the partner-

ship assets than can a claim for income tax of the individual partners as in *United States* v. *Kaufman*, 45 S. C. R 322.

It is argued that no class of creditors, firm or individual is mentioned in the petition, and in all the surroundings, there is nothing to indicate that these men meant only firm creditors. It is also argued that they offered the composition to all of their creditors, firm and individual.

A reading of petition and schedules (Exhibits 2 and 3) shows only that firm debts were involved. The endorsements on the schedules show the schedules to be those of the firm of S. A. & H. Myers. The offer (Exhibit 5) recites that the Myers filed a list of their creditors and they offered to pay those creditors. There was only one list—that of firm creditors. There can be no question, as Massachusetts Court has found, that the debtors incorporated the schedules into their offer. There is not one word in the entire record in the bankruptcy proceedings which shows that the International Trust Company was listed as a creditor of the individuals. The oath that they had no such creditors rebuts any argument that they intended to include the individual debts.

These debtors wished to escape whatever disgrace there may be from going through bankruptcy. They prepared a list of creditors to whom they wished to make an offer and made that offer to that list. The Bankruptcy Court confirmed the offer and by such confirmation, imposed a bargain upon the creditors who were listed, whether such creditors wished to enter into a bargain or not. The Myers deliberately withheld from the Court their individual debts and obligations. As a bargain is predicated upon an offer, none can be created if no offer is made.

The Massachusetts Supreme Court has not refused to give effect to a discharge in bankruptcy, nor does its decision conflict with the decisions of the Federal Courts. On the contrary, it expressly follows the principles laid down in *Cumberland Glass Co.* v. *DeWitt*, 237 U. S. 447. It also follows long established law of Massachusetts as laid down in *Hewes* v. *Rand*, 129 Mass. 519; and in *Stone* v. *Simonds*, 131 Mass. 457. This law has never been questioned.

The petition should be denied.

Respectfully submitted,

JOHN R. LAZENBY,
For the Respondent.

Office Supreme Court, U. S.
FILED
JUN25 1925
WM. R. STANSBURY
CLERK

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. [redacted] 122

SAMUEL A. MYERS AND HARRY MYERS
AS S. A. & H. MYERS,
Petitioners,

*v.*

INTERNATIONAL TRUST COMPANY,
Respondent.

## MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

An inspection of Exhibit 2 (the creditors' petition in bankruptcy) and of Exhibit 3 (the debtors' schedules) adds nothing of value to the description of these exhibits contained in the record and briefs already submitted to this Court. From the memorandum in support of motion for reconsideration, the only matters in these exhibits which the respondent's counsel seems to regard as material are that a petition in bankruptcy was filed against the partnership in the United States District Court for the District of Massachusetts, and that debtors'

schedules were filed in which the debtors swore that they had no individual debts and set out the International Trust Company as a creditor to the extent of $20,000 for notes and that the Trust Company was not listed as a creditor on account of the endorsements.

The language of the creditors' petition is set out verbatim in the petition for certiorari (page 4). The form and substance of the schedules are accurately set out in the petition for certiorari (page 4). The petition there shows that Schedule A (which was the one which contained the debts of the partners) contained the debt to the International Trust Company as a creditor on the notes, and that Schedules C and E (which were designed for the individual debts) had against them "that he has no individual debts."

To the same effect is the description of this petition and these schedules in the brief in support of the petition for certiorari (page 4 to 6).

The brief for the respondent in opposition to the petition for certiorari contains a similar description of both the petition and the schedules (pages 2, 3). It contains no suggestion that there is anything else of importance in them.

The transcript of the record as filed showed that the creditors' petition and the debtors' schedules were to be deemed a part of it (Table of Contents, ante pages 1, 35). This record gave a detailed description of these two exhibits (Record, pages 10, 11, 13, 14, 29, 30, 31, 32).

There was no thought on the petitioners' part or on the part of their counsel, to suppress these exhibits. If it is the desire of the respondent's counsel that the Chief Justice and the Justices of the Supreme Court should, by inspection of these exhibits, verify the concurrent description of them contained in the petition for certiorari, the briefs of the parties, and the transcript of record including the opinion of the Supreme Judicial Court of Massachusetts, it is regrettable that the exhibits were not forwarded at an earlier date; but these exhibits put the Court in possession of no fact which was not

fully before it when the petition for certiorari was granted on June 1st, 1925.

The motion for reconsideration should be denied.

Respectfully submitted,

EDWARD F. McCLENNEN,
For Petitioners.

June 17, 1925.

I have received a copy of the foregoing memorandum.

_____

Attorney for Respondent.

# SUPREME COURT OF THE UNITED STATES

October Term 1926

No. 122

SAMUEL A. MYERS and HARRY MYERS,
Co-partners as S. A. & H. Myers,
Petitioners,

vs.

INTERNATIONAL TRUST COMPANY,
Respondent.

## BRIEF FOR PETITIONERS

EDWARD F. McCLENNEN,
For the Petitioners.

January 3, 1927.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1926
No. 122

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SAMUEL A. MYERS AND HARRY MYERS,
CO-PARTNERS AS S. A. & H. MYERS,
PETITIONERS,

*v.*

INTERNATIONAL TRUST COMPANY,
RESPONDENT.

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# BRIEF FOR PETITIONERS

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## THE ERROR CLAIMED

The Supreme Judicial Court of Massachusetts, reversing the Superior Court, has decided, erroneously, that the offer in composition made by Samuel A. Myers and Harry Myers to pay **all** unsecured debts was not an offer to pay all unsecured debts but **only firm** debts so that the discharge consequent on confirmation did not bar the notes held by the International Trust Company — a scheduled creditor which received its dividend, because the notes signed by Samuel A. Myers and Harry Myers on their face in the name S. A. & H. Myers were also signed by them on the back with the names Samuel A. Myers and Harry Myers.

This failure of the State Court to accord to a discharge in bankruptcy its full efficacy, and to interpret, rightly, the offer in composition made in a Bankruptcy Court of the United States, deprives the petitioners of a federal right and

is ground for the exercise of the jurisdiction of the Supreme Court of the United States.

*Myers* v. *International Trust Co.*, 263 U. S. 64.

*Friend* v. *Talcott*, 218 U. S. 680; 228 U. S. 27.

## STATEMENT OF FACTS

On February 10, 1917, "Samuel A. Myers" and "Harry Myers" filed in the Bankruptcy Court of The Massachusetts District under the caption "Samuel A. Myers and Harry Myers alleged bankrupts," an application for a meeting of "their creditors" to act upon an offer in composition "upon all unsecured debts" in satisfaction of "their debts" (R. 18). This was endorsed "In the matter of Samuel A. Myers and Harry Myers, alleged bankrupts."

On March 3, 1917, "Samuel A. Myers" and "Harry Myers" filed this offer in this court, namely, to pay "all unsecured creditors" (R. 19).

On March 23, 1917, "Samuel A. Myers" and "Harry Myers" filed a petition for the confirmation of this composition (R. 20). This was endorsed, "In the matter of Samuel Myers, Harry Myers, alleged bankrupts."

On May 28, 1917, the court, under the caption "Samuel A. Myers and Harry Myers, alleged bankrupts," entered an order confirming this composition (R. 22).

This is the discharge which the petitioners claim to be a bar in this suit.

The significance of these documents is enlightened by the procedural requirements in the court in which they were filed. The District Court of the United States for the District of Massachusetts "has consistently refused to make the adjudication of a partnership unless all the partners are adjudged bankrupt at the same time" (*In re Forbes*, 128 Fed. 137, 140; approved at 228 U. S. 701). "We do not perceive that the clause imports that the partnership could be in bankruptcy, and the partners not" (*Francis* v. *McNeal*, 228 U. S. 695, 701). "On the other hand it would

be an anomaly to allow proceedings in bankruptcy against joint debtors from some of whom, at any time before, pending, or after the proceeding, the debt could be collected in full" (same page). "Finally, it would be a third incongruity to grant a discharge in such a case from the debt considered as joint but to leave the same persons liable for it considered as several. We say the same persons, for however much the difference between firm and member under the statute be dwelt upon, the firm remains at common law a group of men and will be dealt with as such in the ordinary courts for use in which the discharge is granted" (same page). "The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by the discharge" (Bankruptcy Act, Sec. 14(c); Compiled of 1916, Sec. 9598).

It was in the light of this procedural, administrative and substantive law that these documents got their significance.

Before they were filed, creditors had filed an involuntary petition in this Bankruptcy Court which alleged that "Samuel A. Myers and Harry Myers, both of Brookline in the County of Norfolk, co-partners trading as S. A. & H. Myers, have his principal place of business at Boston and owes debts to the amount of $1,000.00; that said Samuel A. and Harry Myers are insolvent. * * * Wherefore your petitioners pray that service of this petition with a subpoena may be made upon Samuel A. and Harry Myers * * * and that he may be adjudged by the court to be a bankrupt" (R. 29). No adjudication was ever made on this petition.

On the day of filing the application for a composition meeting February 10, 1917, Samuel A. Myers and Harry Myers filed on the standard form used in the Massachusetts District, a schedule of all their firm creditors and of all their individual creditors. This schedule set out that "Samuel A. Myers of Boston and Harry Myers of Brookline respectfully represent that they are in the clothing business * * *

have been partners under the firm name of S. A. & H. Myers, having their principal place of business at Boston." Schedule A purported to contain the debts of the partners, Schedule C purported to contain the debts of Samuel A. Myers. Schedule E purported to contain the debts of Harry Myers. Against Schedule C was written, "that he has no individual debts." Against Schedule E was written. "that he has no individual debts." On Schedule A appeared the name and address of the International Trust Company as a creditor on notes for $20,000.00 (R. 30).

At this time, the International Trust Company held notes amounting in the aggregate to $20,000.00. These were signed on the face, "S. A. & H. Myers," and on the back "S. A. & H. Myers, S. A. Myers, Harry Myers" (R. 16). International Trust Company opposed the confirmation of the composition. After it was confirmed, and this company had received its composition dividend, it sought, unsuccessfully, to avoid the discharge (*Myers* v. *International Trust Co.*, 263 U. S. 64). It then brought on for trial, the suit now at bar to recover against Samuel A. Myers and Harry Myers individually on the ground that their liability as signers on the back of the notes was not barred by the discharge. The suit failed in the Superior Court, and on appeal prevailed in the Supreme Judicial Court. Pursuant to the rescript of the Supreme Judicial Court, a final decree was entered in the Superior Court against the defendants. The defendants, petitioners, seek the reversal of this decree because the discharge was a bar.

## ARGUMENT

Samuel A. Myers and Harry Myers, in filing their composition offer, clearly manifested their intention to offer to pay a composition dividend to all the creditors whom they had, in whatever way the liabilities arose, and to have a discharge from all those liabilities. They included the International Trust Company in the offer. It is not to be supposed that they intended to get a futile discharge from

this creditor. On the confirmation of the composition the assets which they were releasing by the composition would be immediately reachable by the International Trust Company if Samuel A. Myers and Harry Myers were not discharged in all respects from this claim. No one reading their application for composition would suppose that they were manifesting an intention to make an offer which would leave such a result. If the matter had proceeded to adjudication in bankruptcy, and administration without composition, the International Trust Company would have received no more, ratably, than any other creditor because the debtors had no assets except the firm assets.

The creditors' petition for adjudication, as required by the rules of the Massachusetts District, petitioned as to each partner, "that he may be adjudged by the court to be a bankrupt." The District Court would not have adjudicated the partnership bankrupt, unless adjudicating the two partners, individually (*In re Forbes*, supra). Faced with this prospect of individual bankruptcy, the Bankruptcy Act gave each of them a right to offer a composition before adjudication (Bankruptcy Act, Sec. 12, as amended June 25, 1910, Ch. 412, Sec. 5; Compiled of 1916, Sec. 9596). They showed, clearly, an intention to get as much of a discharge by composition as they could get in the course of ordinary bankruptcy administration.

"The confirmation of a composition shall discharge the bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge" (Bankruptcy Act, Sec. 14(c); Compiled 1916, Sec. 9598).

This discharge covered "all unsecured creditors" of the persons offering the composition, both with respect to the joint and with respect to the several liability (*Francis* v. *McNeal*, 228 U. S. 695, 701; *Abbott* v. *Anderson*, 265 Ill. 285 — 106 N. E. 782; *Bear* v. *Liberty National Bank*, (C. C. A. 4th) 285 Fed. 703, 705 — reversed on other grounds at 265 U. S. 365).

In *Bear* v. *Liberty National Bank*, the creditor, claiming a lien, held a judgment on notes made by a partnership and **endorsed by the individual partners.** The court in holding that an adjudication of bankruptcy against the partnership was of necessity an adjudication against the individuals, said (705):—"It cannot be that the bankruptcy of the partnership carries the partners into the proceeding with their assets and liabilities for the purpose of proving debts, adjusting equities, preventing preferences generally, and distributing to creditors the individual as well as partnership assets, and yet does not carry them in for the two other main purposes of the bankruptcy statute, namely, protecting creditors against the preference of liens acquired within four months of bankruptcy, and **discharging the debtor from his debts**" (Type not heavy in original). "The effect of the composition proceeding is to substitute composition for bankruptcy proceedings in a certain sense, and in a measure to supersede the latter proceeding, and to reinvest the bankrupt with all his property free from the claims of his creditors" (*Cumberland Glass Co.* v. *DeWitt*, 237 U. S. 447, 454).

Manifestly, the composition discharge sought by the petitioners was to be co-extensive with this discharge which they would receive in the ordinary course of bankruptcy. They had filed schedules of their debts and assets — both firm and individual — as required by the rules of the District. It is contended for the International Trust Company that the debtors filed no individual schedules. It is submitted that this is not so. A schedule does not cease to be a schedule of individual debts or of individual assets merely because the bankrupt says that he has none such. By this statement they were on their oath in the Bankruptcy Court that they had no creditors — whether firm or individual — other than those that appeared on the sheets filed, and no assets — whether firm or individual — other than those that appeared on the sheets filed. If these statements were erroneous, the alleged bankrupts were

open to prosecution, not because they had filed no schedules but because they had filed false schedules. If they had filed no schedules of individual debts or of individual assets they would not be open to prosecution for filing false ones. Therefore, they had filed schedules of all their debts and assets — both firm and individual. In their composition offer they say without any limitation or exception "that they have filed a schedule of their property and a list of creditors to be filed by the bankrupts." In the court in which this statement was made, because of the requirement of its rules, this meant a schedule of their individual and firm assets and liabilities. They set out that they owe the International Trust Company $20,000.00 on notes. This was the whole truth. The debt in all ways was incurred exclusively in the firm business. It was of no substantial consequence that these same men — the only debtors — had signed in more than one way. It was only if there had been individual assets that it would have been of importance. As partners, they were jointly and severally liable for the $20,000.00. They were not any more severally liable because their names were on the back. They owed these notes for different reasons, but they did not owe them twice over.

Under these circumstances their composition offer meant no less than it said on its face (R. 18). It was not a composition offer by the firm of S. A. & H. Myers. It was not an offer by Samuel A. Myers and Harry Myers to pay only their firm debts. It said nothing about the firm. It was entitled with their individual names. It was to pay "their" debts, and not merely their firm debts. It was to pay "all" debts, and not merely firm debts. It was to pay "all" claims (R. 19), and not merely claims against the firm. There is no restriction in the text. There is no restriction to be inferred from the object which the offerors manifested an intention to accomplish. When Samuel A. Myers and Harry Myers, in their individual names, offered to pay the International Trust Company the stated dividend in

composition on the scheduled notes, they were to get, in return, a discharge of Samuel A. Myers and Harry Myers from all liability to the International Trust Company.

The decree should be reversed, and a decree entered for the defendant-petitioners.

Respectfully submitted,

EDWARD F. McCLENNEN,

For the Petitioners.

January 3, 1927.

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# Supreme Court of the United States

OCTOBER TERM, 1926.

No. 122.

SAMUEL A. MYERS and HARRY MYERS
as S. A. & H. Myers,
*Petitioners.*

v.

INTERNATIONAL TRUST COMPANY,
*Respondent.*

## BRIEF FOR RESPONDENT.

JOHN R. LAZENBY,
*For the Respondent.*

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# Supreme Court of the United States.

OCTOBER TERM, 1926.

SAMUEL A. MYERS and HARRY MYERS, as S. A. & H. MYERS, Petitioners,

vs.

INTERNATIONAL TRUST COMPANY, Respondent.

## BRIEF OF RESPONDENT.

In 1916 Samuel A. Myers and Harry Myers carried on a clothing business in Boston as partners under the firm name of S. A. & H. Myers. (Rec., p. 12.)

Beginning with October 2, 1916, and ending December 19, 1916, the partnership borrowed $20,000 from the International Trust Company, giving a series of ten notes, each for $2,000. The form of the notes was "we promise to pay to the order of ourselves $2,000." They were signed "S. A. & H. Myers," and on the back were endorsed "S. A. & H. Myers, Samuel Myers, Harry Myers." (Exh. A to J, Rec., pp. 6 to 9.) Samuel A. Myers endorsed all ten—Harry Myers endorsed nine. The making of the notes and the endorsements were admitted. (Rec., pp. 12 to 13.)

On January 27, 1917, an involuntary petition in bankruptcy was filed in the District Court, District of Massachusetts, alleging that "Samuel A. Myers and Harry Myers, both of Brookline, in the County of Norfolk, copartners trading as *S. A. & H. Myers*, have for the greater portion of six months next preceding the date of filing

this petition had *his* principal place of business at Boston, in the County of Suffolk, and State and District aforesaid and *owes* debts to the amount of $1,000," were insolvent. The prayer of the petition was "that service of this petition, with a subpoena, may be made upon Samuel A. & H. Myers as provided in the Acts of Congress relating to bankruptcy, and that *he* may be adjudged by the Court to be *a bankrupt* within the purview of such acts." (Exh. 2.) (Italics not in original.)

On February 9, 1917, schedules (Exh. 3) were sworn to and filed on February 10, 1917. One set only of the schedules was filed and sets out "Samuel A. Myers of Boston and Harry Myers of Brookline respectfully represent: That they clothing business have been partners under the firm's name of S. A. & H. Myers having their principal place of business at Boston, in the County of Suffolk and District and State of Massachusetts, for the greater portion of the six months next immediately preceding the filing of this petition; that said partners owe debts which they are unable to pay in full * * *"

In Schedule A is set out "a full and complete statement of all the debts of said partners" and in B all the property "of said partners." The form used had schedules C, D, E and F, in which were to be set out the debts and assets of the individuals. Each of the individuals struck out the paragraph relating to schedules C, D, E and F, and substituted the statement "that he has no individual debts and no individual assets except household furniture and wearing apparel to the value of $300 claimed to be exempt under Revised Laws of Massachusetts, Chapter 177, Section 34." (Exh. 3.)

In Schedule A, which contained a list of the firm debts, the International Trust Company appears as a creditor for $20,000. In no place does the Trust Company appear as a creditor on account of the endorsements of each of the individuals. (Exh. 3.)

Concurrently with the schedules was filed a petition for a meeting of creditors to consider an offer in composition of 40% upon all unsecured debts "in satisfaction of their debts is to be proposed *before adjudication* * * *" (Exh. 4, Rec., p. 18.) (Italics not in original.)

On March 3, 1917, an offer in composition was filed: "Respectfully *represents* Samuel A. Myers, of Boston in the County of Suffolk in said District, and Harry Myers, of Brookline in the County of Norfolk and district aforesaid: that the said Samuel A. Myers & Harry Myers have been examined in open Court at a meeting of their creditors, that they have filed in Court a schedule of their property and a list of creditors to be filed by bankrupt; and that they now offer the following terms of composition before adjudication to creditors * * *" (Exh. 5, Rec., p. 19.) (Italics not in original.)

On March 23, 1917, there was filed an application for confirmation of the composition. It alleges that "Samuel A. Myers & Harry Myers * * * had filed in court a schedule of their property and a list of their creditors, as required by law, they offered terms of composition to their creditors * * *" (Exh. 6, Rec., p. 20.)

On May 28, 1917, the District Court confirmed the composition. (Exh. 8, Rec., p. 22.)

At no time was the firm adjudicated bankrupt. (Rec., p. 15.)

The International Trust Company proved the notes against the firm for $20,000 and received the payment in composition on this proof, which left a balance of $11,932.07. (Rec., p. 15.) No payments were received on account of the individual endorsements.

Thereafter the Bank brought a bill in equity in the State Court against Samuel Myers and Harry Myers as individuals, upon their endorsements, and sought to recover the unpaid balance of $11,932.07 with interest. The defendants in their answer set up that the confirmation of the composition, Ex-

hibit 8, discharged them from liability upon their individual endorsements. The Supreme Judicial Court of Massachusetts held that it did not. (Rec., pp. 29 to 34.)

The defendants now claim that the Supreme Judicial Court of Massachusetts has failed to accord to the discharge its full efficacy as interpreted by the Courts of the United States and that the decision of the State Court creates a conflict with the decisions of the Supreme Court and of the Federal Courts, and all Courts of other States on the same question.

## ARGUMENT.

### I.

### The endorsement of the notes by each of the partners as individuals created obligations separate and distinct from the firm obligations, and made each of the partners individually liable upon those endorsements.

The plaintiff is not seeking to get a dividend greater than what the other creditors received. It is seeking to enforce a right which other creditors did not have.

When these notes were given, the Myers intended to give, and did give, two different obligations:

(a) The promise of the firm as a firm to pay the notes;

(b) The promise of Samuel Myers and of Harry Myers individually to pay the notes. This promise arose from the individual endorsements.

> "* * * A partner indorsing individually was a party different from the partnership and thereby might incur a double liability arising from the two distinct contracts by which he had bound himself."

*Fourth National Bank* v. *Mead*, 216 Mass. 521 at 523.

See also *Uniform Partnership Act* (Mass.) St. 1922 c. 486, Sec. 15.

"* * * An individual who is engaged in business with others as partners may become liable as one of such partners, and at the same time individually as distinguished from his liabilities by reason of his partnership relation. A frequent example and illustration of such liability arises where a partner becomes liable upon an instrument signed in the partnership name and at the same time by his individual signature as a guarantor or surety thereon."

*Matter of Peck*, 206 N. Y. 55, 60;
*Wilder* v. *Keeler*, 3 Paige 167 (N. Y.)

The Bankruptcy Act recognizes these two rights.

Such a form of firm note and endorsement by the individual partners gives the holder the right to recover all he can out of the firm assets, and also out of the personal and individual assets of each of the endorsers. In the event of bankruptcy of the firm and of the partners, the holder of such notes may prove against the firm assets and receive the dividend that firm creditors receive, and also against the individual assets of each of the partners and receive the dividend which the personal and individual creditors receive.

*In re Frazer*, 221 Fed. 83;
*In re McCoy*, 150 Fed. 106 (C. C. A. 7th); affirmed under title of *Chapman, Trustee*, v. *Bowen*, 207 U. S. 89;
See also *Second National Bank* v. *Yankou*, 4 Fed. (2nd) 445 (C. A. D. C.)

In *Reynolds* v. *New York Trust Co.*, 188 Fed. 611, at page 613 (C. C. A. 1st), it is said:

"Where there are separate and distinct express contracts of the firm and of a co-partner to pay a debt contracted by the firm, the right to prove against both estates may be conceded. If one dealing with a firm procures also the individual undertaking of a partner to answer for the firm debt, there are substantial reasons for permitting him to resort to both estates."

See also *Robinson* v. *Seaboard National Bank*, 247 Fed. 667, at page 669; affirmed on motion for rehearing, 247 Fed. 1007 (C. C. A. 3d).
See *In re Coe*, 183 Fed. 745 (C. C. A. 2nd).

It has been urged repeatedly by the Myers that the Bank had only one claim and they persistently cite *Abbott* v. *Andersen*, 265 Ill. 285, as authority. That case is entirely different. A firm creditor proved against the firm assets and then sought to recover the deficiency from the individual estates. The Court said at page 286:

"The sole question of law was whether the discharge of the partnership in bankruptcy discharged the partners, individually, from the partnership debts."

In such a case the creditor had only one claim, the obligation against the firm, and was attempting to get double payment of one claim. The question of the discharge of the individual partners from their individual debts apart from their firm debts was not involved. In the present case there are the two claims, the obligation of the firm and the obligation of individual partners arising out of the separate and distinct promises to pay by reason of the individual endorsement of the notes. The Bank seeks single payment of each of two distinct contracts.

The final decree in the case before the Court brings out the difference between *Abbott* case and the present case. Harry Myers did not endorse one note (Rec., p. 13). Samuel A. Myers endorsed all (Rec., pp. 6-9, 13). The final decree

(Rec., 26) is that Harry Myers pay $16,264.64 and Samuel A. Myers pay $18,051.82. The difference is due to the endorsements. Yet as a firm each was liable for exactly the same sum.

## II.

### The discharge given a bankrupt follows the pleadings in the bankruptcy proceedings.

The usual procedure in a bankruptcy case is that, after petition, answer and schedules are filed, the debtor is adjudicated bankrupt; the property of the bankrupt is turned over to a trustee, and the debtor moves for a discharge.

Partnership have caused two lines of decisions to develop; one, that the partnership is an entity separate and apart from the individual members of the firm; the other, that there is no entity. In the first line of cases the partnership may be adjudicated bankrupt without the individual partners being bankrupt.

> *In re Meyer*, 98 Fed. 976 (C. C. A. 2d);
> *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th);
> *Horner* v. *Hamner*, 249 Fed. 134 (C. C. A. 4th).

In the second the partnership cannot be insolvent unless the partners are also.

> *In re Forbes*, 128 Fed. 137;
> *Vaccaro* v. *Security Bank*, 103 Fed. 436 (C. C. A. 6th);
> *Francis* v. *McNeal*, 228 U. S. 695, but see *Liberty National Bank* v. *Bear*, 265 U. S. 365, 368.

The true rule seems to be that set out in *Fort Pitt Coal & Coke Co.* v. *Diser*, 239 Fed. 443 (C. C. A. 6th), at page 447:

> "* * * the adjudication in bankruptcy of a partnership on a ground involving its insolvency, includes a determination that the applicable portions of the separate estates of the partners, as well as the partnership estate, are in that proceeding to be subjected to the payment of the partnership debts, regardless of whether all or any of the partners themselves are adjudged bankrupt."

Further difficulty has arisen where by the pleadings the firm alone is before the Bankruptcy Court, and has been discharged from the firm debts, but no action has been taken by or against the individual partners.

In such cases there are two sets of debts affected by the proceedings:

(a) The discharge of the firm discharges the individual partners from the firm debts, so that they cannot be held subsequently to make good the deficiency.

> *Abbott* v. *Anderson*, 265 Ill. 285;
> *Armstrong* v. *Norris*, 247 Fed. 253 (C. C. A. 8th);
> *Francis* v. *McNeal*, 228 U. S. 695, at page 701, dictum.

Contra:

> *In re Bertenshaw*, 157 Fed. 363 (C. C. A. 8th);
> *Horner* v. *Hamner*, 249 Fed. 134, 141 (C. C. A. 4th).

(b) The discharge of the firm does not affect the individual and personal debts of the individual partners, so that each partner can be held subsequently for a payment of his own individual and personal debts.

> *In re Neyland & McKeithen*, 184 Fed. 144, 150;
> *Horner* v. *Hamner*, 249 Fed. 134 (C. C. A. 4th);
> *In re Sugar Valley Gin Co.*, 292 Fed. 508, 509.

The present case clearly falls into the latter class, as the claim upon which this action is brought is founded upon the

personal and individual debts of each of the partners. It is not an attempt to hold the defendants upon the firm debts.

The petitioners in their brief in support of their petition cite an extract from *Bear* v. *Liberty National Bank,* 285 Fed. 703, at 705 (C. C. A. 4th). An involuntary petition in bankruptcy was filed against a partnership alleging that it was insolvent. There was no allegation that the individual partners were insolvent and no prayer that they be adjudged bankrupt as individuals. The firm was adjudicated, the individuals were not. The Bank prior to the bankruptcy proceedings had obtained a judgment against the firm on notes and against the individuals because the notes were endorsed by the individuals. By local law the judgment became a lien on the real estate. More than nine months after the judgment the individuals filed petitions in bankruptcy and were adjudicated. In this proceeding the Bank filed proof of claim alleging a lien on the real estate. On objections of the trustee the District Court held that the first bankruptcy proceeding had merely adjudged the firm bankrupt and not the individuals. The Circuit Court of Appeals reversed the District Court on the ground that the adjudication of the partnership was necessarily an adjudication of the bankruptcy of the individuals composing it and the lien arose within four months and was lost. On certiorari to the Supreme Court, *Liberty National Bank* v. *Bear,* 265 U. S. 365, the Court said at page 368, "Upon the question whether the adjudication of a partnership involves an adjudication of the bankruptcy of the individual partners, there appears to have been a diversity of opinion in the lower federal courts. The decision in *Francis* v. *McNeal,* 228 U. S. 695, upon which the Circuit Court of Appeals chiefly relied, did not involve a determination of this direct question. And we do not find it necessary to determine it now; since, even if the adjudication of the bankruptcy of the Company (firm) operated as an adjudication of the bankruptcy of the Beckers individually—which we do not intimate—nevertheless, in the absence of either

pleading or proof as to their insolvency when the Bank recovered its judgment, there is no ground under Sec. 67f of the act for annulling the lien thereby acquired upon their property."

Whatever the conflict may be, the discharge, however, follows the pleadings.

In *Francis* v. *McNeal*, 228 U. S. 695, cited by the petitioners, the Bankruptcy petition was against both the firm and the individuals and expressly alleged that they were bankrupt both individually and as a firm (p. 698). The firm was adjudicated bankrupt. An order was made directing that the property of one of the individuals be turned over to the Trustee to administer. It was held that the order was correct.

This *McNeal* case has no bearing on the *Myers* case now before the Court. The petition in the *McNeal* case alleged both the firm and the individuals were insolvent. The petition in the *Myers* case did not. In the *McNeal* case any action taken as to the property either of the firm or of the individuals followed the pleadings.

There can be no adjudication of the bankruptcy of either the firm or the individuals, unless it be shown that both are insolvent. The insolvency of both must be averred and proved.

*Vaccaro* v. *Security Bank*, 103 Fed. 436, 442.

In *In re Griffith*, 280 Fed. 878, the petition against the firm was dismissed because it did not allege the insolvency of the partners.

Lowell, J., in the Massachusetts District Court, in administering the 1898 Bankruptcy Law, insisted that a petition against a partnership must include the individual partners. He "has consistently refused to make the adjudication of a partnership, unless all the partners be adjudged bankrupts at the same time."

*In re Forbes*, 128 Fed. 137, 140.

The form Exhibit 3 sets out the practice and provides schedules for both the firm and the individuals, and these forms constitute the pleadings upon which subsequent adjudication is made.

Where, however, either the firm or the individuals alone are named in the petition or answer, then the subsequent adjudication can be made only against such as are named.

If the individual is adjudicated, a discharge from the firm debts will not be granted until the firm is brought into the proceedings.

*In re Morrison*, 127 Fed. 186;
*In re Meyer*, 96 Fed. 408;
*In re Laughlin*, 96 Fed. 589;
*In re McFann*, 96 Fed. 592;
*In re Hartman*, 96 Fed. 592.

So also when the partnership is adjudicated and the individuals are not.

*In re Pincus*, 147 Fed. 621;
*Horner* v. *Hamner*, 249 Fed. 134, 141 (C. C. A. 4th).

See also,

*In re Samuels*, 215 Fed. 845, 851-852 (C. C. A. 2nd).

"* * * To grant this relief (discharge) without bringing their individual property and individual creditors into this proceeding is not only without statutory authority, but is clearly wrong." *In re Pincus, supra*, p. 625.

In *In re Hale*, 107 Fed. 432, the proceedings were against "Hale Bros. or L. H. Hale and Mary C. Hale trading as Hale Bros." (p. 433). The two individuals did not file any individual schedules, and it was held that the individuals were not entitled to a discharge.

See also,

*Horner* v. *Hamner*, 249 Fed. 134, 137.

In the present case the petition alleged: "Samuel A. Myers and Harry Myers, both of Brookline in the County of Norfolk, co-partners trading as S. A. & H. Myers have for the greater portion of six months next preceding the date of filing this petition, had *his* principal place of business at Boston, in the County of Suffolk, and State and district aforesaid and *owes* debts to the amount of $1000," were insolvent and had committed an act of bankruptcy, "wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon Samuel A. & H. Myers, as provided in the acts of Congress relating to bankruptcy, and that *he* may be adjudged by the court to be *a bankrupt* within the purview of such acts" (Exh. 2) (italics are counsel's).

The answer and schedules were those of the partnership: "Samuel A. Myers of Boston and Harry Myers of Brookline, respectfully represent that they clothing business have been partners under the firms name of S. A. & H. Myers, having their principal place of business at Boston * * * that the said *partners* owe debts which they are unable to pay." They allege that Schedule A contains "a full and true statement of all the debts of *said partners*," and B "an accurate inventory of all the property * * * *of said partners*." Each then expressly swore that he had "no individual debts" and no individual assets. The oath reads:

> "Samuel A. Myers and Harry Myers, the debtors mentioned and described in the *foregoing petition*, do make solemn oath that the statements contained therein are true to the best of their knowledge, information and belief" (Exh. 3) (italics are counsel's).

The International Trust Company is listed as a creditor for $20,000. The fact of the endorsements does not appear in the schedules.

The endorsement on the back of the schedules reads:

> "Debtors' Schedules"
>
> "Samuel A. Myers and Harry Myers as S. A. & H. Myers, of Boston, Mass., residence 36 Otis Street"

"Filing the schedule in a proceeding in bankruptcy is an ex parte act on the part of the bankrupt, and in that proceeding is a solemn admission which unless corrected, binds him."

*Horner* v. *Hammer*, 249 Fed. 134, 137.

There was no correction of these schedules.

The offer in composition "respectfully represents" and incorporates the schedules as filed, as the list of creditors to whom the offer is made. It states that—

"They have filed in Court a schedule of their property and a list of creditors to be filed by bankrupts" (Rec., p. 18).

Similarly in the application for confirmation they "respectfully represent to the court that, after they had been examined in open court (or at a meeting of their creditors) and had filed in court a schedule of their property and a list of their creditors as required by law, they offered terms of composition to theid creditors" (Rec., p. 19). On this application the composition was confirmed.

In *In re E. W. Adams & Co.*, 283 Fed. 431, there was a partnership, one member of which had died. Involuntary proceedings were brought against the partnership and the surviving partners. Before adjudication a composition was offered and accepted by a majority of creditors. The estate of the deceased partner was not made a party. It was held that the partnership and surviving partner may be adjudged bankrupt and may offer a composition. It is said:

"Objection is made that this would be unjust to the creditors, because it would *cancel the debt* and prevent collection of any part thereof from the estate of the deceased partner. But a composition does not have the effect of *cancelling the debt*, but merely prevents the enforcement of it against those debtors who are parties to the bankruptcy proceedings, and that is, in this case, the partnership assets of E. W. Adams & Co., and the two surviving partners individually" (p. 433).

It is submitted that the firm alone was the party in the proceedings and that the discharge arising out of the confirmation of the composition discharged these respondents only from the debts which they listed as the partnership debts, and had no effect upon the individual liabilities.

## III.

### The composition is to be construed strictly, and affects only those debts which are set out in the schedules.

The cases cited above refer to the ordinary bankruptcy case, where there is an adjudication. A composition is entirely different.

In the ordinary bankruptcy case there is an adjudication that the debtors are insolvent. The assets are then taken by the Court and liquidated by a trustee, who divides these assets *pro rata* among the creditors who have proved. If any creditor fails to prove, his share goes to increase the share of those who have. Section 12 of the Bankruptcy Act provides for a composition. It is set out in Appendix A hereof. The schedules referred to in Section 12 are those required in Section 7-a, (8), which deals with the duties of bankrupts.

In *Cumberland Glass Co.* v. *De Witt*, 237 U. S. 447, at page 453, it is said:

> "The nature of composition proceedings is nowhere better stated than by Judge Lowell in *In re Lane*, 125 Fed. Rep. 772, 773, in which it is said:
>
> " 'The case of composition is in some respects exceptional. It is a proceeding voluntary on both sides, by which the debtor of his own motion offers to pay his creditors a certain percentage of their claims in exchange for a release from his liabilities. The amount offered may be less or more than would be

realized through distribution in bankruptcy by the trustee. The creditors may accept this offer or they may refuse it. For the purposes of the composition all the creditors are treated as a class, and the will of the majority is enforced upon the minority, provided the decision of the majority is approved by the court. Except for this coercion of the minority, the intervention of the court of bankruptcy would hardly be necessary. Section 12-e (30 Stat. 550 [U. S. Comp. St. 1901, p. 3427]) provides: 'Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.' Composition is thus treated, even in the act, as in some respects outside of bankruptcy. In the ordinary case of distribution by a trustee, the debtor's whole property, save that which is exempt, is applicable to the payment of his debts and belongs to his creditors, and not to him, until their claims have been satisfied. After adjudication there is no voluntary offer to pay by the bankrupt, and no bargained release by the creditor. The creditor takes all his debtor's property whether the debtor likes it or not. * * * The bankrupt's rights of property arise only in the event of a payment of his creditors in full. If a creditor will not prove his claim, the bankrupt does not take that creditor's share, but it goes to swell the dividends of creditors more diligent. Section 66 of the act (30 Stat. 564 [U. S. Comp. St. 1901, p. 3448]) has the same purpose, and does not apply to composition. But if the composition is paid the creditors have no further claim upon the debtor or his property. In a composition the creditor gets, not his share of the bankrupt's estate, but what he bargained for, and he has no right to claim more.'"

In *Nassau Works* v. *Brightwood Co.*, 265 U. S. 269, at 271, it is said:

"Composition is a settlement by the bankrupt with his creditors. In a measure, the composition supersedes, and is outside of, the bankruptcy proceedings. *Cumber-*

*land Glass Co.* v. *De Witt*, 237 U. S. 447, 454. It originates in a voluntary offer by the bankrupt; and results, in the main, from voluntary acceptance by his creditors."

And again at page 273:

"There is no 'bankrupt estate' where there is no adjudication. And even where there is an adjudication, the proof made is not against the 'bankrupt estate,' if a composition follows. The claim is against funds deposited by the debtor pursuant to a bargain with his creditors."

A composition is in derogation of the common law and compels any dissenting creditor to accept the percentage satisfactory to the majority and deprives a dissenting creditor of his remedy for the balance.

*In re Frear*, 120 Fed. 978, 980.
*In re Kinnane Co.*, 221 Fed. 762, 766.
*In re Goldstein*, 213 Fed. 115, 116.

In *In re Rider*, 96 Fed. 808, speaking of a composition as being in derogation of common-law rights and the dangerous exercise of legal power to compel a minority to surrender all claim upon the debtor's estate at the dictation of the majority, the Court says, at page 809:

"* * * A law which compels a creditor, against his will, to accept in discharge of his debt just what the debtor sees fit to offer, should be strictly construed. Loveland on Bankruptcy, p. 549. *In re Shields*, Fed. cases No. 12784.

"The present law should be construed in the light of similar prior enactments and any doubt should be resolved against those who seek to deprive creditors of the right to have the debtor's property applied to the payment of his debts."

It must be strictly construed.

*In re Kinnane Co.*, 221 Fed. 762, 766;
*In re Rider*, 96 Fed. 808, 809, 810.

The confirmation of a composition offered to the firm creditors does not discharge the debtor from the debts due individual creditors.

*In re Coe,* 183 Fed. 745 (C. C. A. 2nd).

Individual creditors are not permitted to participate in the fund deposited with an offer of composition to firm creditors,

*United States* v. *Kaufman,* 267 U. S. 408,

and the reason is clear. There is no offer made to the individual creditors which they can accept. No bargain can be made.

This Court speaks of the composition as an offer and a bargain, but it is a bargain forced upon creditors who may not want it. When the Myers filed their schedules setting forth their partnership debts, they made an offer to those creditors whom they listed. They deliberately set out the debts from which they wanted relief. The bargain which the Court imposed is one only with those to whom the offer is made—the firm creditors. No offer was made to the individual creditors. It is difficult to see how any bargain can be created when there was no offer upon which that bargain can be founded.

It is argued that this was an offer to pay all debts both firm and individual. Section 12 b requires the deposit of the "consideration" to be paid to the creditors. It is not claimed and there is no evidence that the Myers deposited the money necessary to pay the 20% in cash and the notes on account of the individual debts arising out of these endorsements.

In *In re Rider, supra,* the Court says that the present law should be construed in the light of similar prior enactments.

The Massachusetts Supreme Court passed on the effect of a composition under the Bankruptcy Act of 1867. Section 12 of the present Act is derived from the amendment of 1874 to Section 43 of the Bankruptcy Act of 1867. So much of Sec-

tion 43 as relates to compositions is set out in Appendix B. The first paragraph provides for a meeting of creditors. The section continues:

> "The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole value of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due."

This is the only provision for a list of creditors in connection with a composition in the 1867 Act.

Section 12 of the present Act is annexed as Appendix A.

A comparison of the sections shows that the principle in both is the same. In the old Act the debtor produced his list of creditors at the meeting. Under the present Act he files his list in court.

In *Hewes* v. *Rand*, 129 Mass. 519, the alleged bankrupt made an offer in composition. The plaintiff's claim was set out in the schedules as being for the sum of "$750. notes and unsettled account," while in fact it was for $777.81. He declined to accept the dividend. It was held that, if the debt is stated at an amount less than it really is, the creditor is not bound by the composition and may sue for the full amount as if no composition had been made.

In *Stone* v. *Simonds*, 131 Mass. 457, the debtor in his schedules set out the name of the holder of a note as "Alanson Stone," when in fact the holder was Alason Stone administrator. The dividend in composition was paid to the attorney for Alanson Stone. In a suit brought by Alanson Stone, administrator, by the same attorney, it was held that the composition did not discharge this note. At page 462 it is said:

> "But as it [composition] differs from ordinary proceedings in bankruptcy in leaving the estate in the control of the bankrupt, instead of committing the adminis-

tration of the estate to assignees or trustees appointed by the court, the act of congress has made it an express condition to its taking effect against any creditor, that his name and address and the amount of his debt shall be set forth in the preliminary statement of the debtor, as originally filed with the object of securing notice to all creditors, or as afterwards amended by leave of court in bankruptcy upon like notice; and a creditor, whose name or the amount of whose debt is not truly stated in the debtor's schedule, is not affected or prejudiced by the composition, but may sue the debtor at law as if no proceedings for composition had been had."

In *Ex parte Trafton*, 2 Lowell, 505, Lowell, J., at page 506, says:

"I say that this is the question [whether disputed claims are to share in the composition], because it is impossible to admit that if the debtor does all he can, by putting down the name and residence of the person who alleges himself a creditor, it shall be optional with the latter to come in or not, as he chooses. No doubt, this is his privilege, if his name is omitted altogether, because the debtor cannot object to any creditors sharing with the others; but this option arises out of the default of the debtor in omitting the name.

* * * * * * * * *

"The creditor has a right to come in and prove the true amount, and if he fails to do so, it will be for the State courts to say whether he is bound by the composition."

The bank could make no condition that the acceptance of the composition did not affect the debt arising under the endorsements. The Court enforced the offer in face of the objection of the bank and the expressed unwillingness of the bank to accept any composition whatsoever.

It is respectfully submitted that the confirmation of the composition did not affect the claims of the individual creditors arising out of the personal and individual obligations

of the defendants. These defendants, by making an offer in composition, sought to avoid the disgrace arising out of the bankruptcy proceeding. They prepared their own lists of creditors to whom they wished to make an offer, and made that offer to that list of creditors. The Court confirmed the offer, and by such confirmation the balance of the debt due to those creditors was wiped out. The defendants withheld from the Court their individual debts and obligations, and made no offer to them. The plaintiff was one of those individual creditors. It now asks that these debtors pay their individual debts.

Respectfully submitted,

JOHN R. LAZENBY,
*For the Respondent.*

## APPENDIX A.

Sec. 12. *Compositions, when Confirmed.*

*a A bankrupt may offer, either before or after adjudication, terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt, and preservation or conduct of estates, at which meeting the judge or referee shall preside; and action upon the petition for adjudication shall be delayed until it shall be determined whether such composition shall be confirmed.**

*b* An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited by and subject to the order of the judge.

*c* A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

*d* The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to per-

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*Amendment June 25, 1910, Ch. 412, Sec. 5, Comp. St. §9596.

form any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

*e* Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

## APPENDIX B.

### BANKRUPTCY ACT OF 1867.

Sec. 43 * * *

(R. S., sec. 5103 a (22 June, 1874, Ch. 390, sec. 17, 18 Stat. 182)—That in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor, of the time, place, and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resoluion shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purpose of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he or, if he is so prevented from being at such meeting, some one in his

behalf, shall produce to the meeting a statement showing the whole value of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed by this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed: and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by a resolution passed in the matter and under the circumstances aforesaid, add to or vary the provisions of, any composition previously accepted by them, without prejudice to any person taking interest under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner and proceeded with in the same way and with the same consequences as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursuance of this section shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note he shall be required

to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts may be corrected upon reasonable notice and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a pro rata payment or satisfaction in money, to the creditors of such debtor in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not in such case be computed in calculating periods of time prescribed by said act.

